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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1995

Addendum

NEW ZEALAND

[22 September 1995]

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Introduction

1. This is New Zealand's initial report to the Committee on the Rights of the Child. It has been prepared in accordance with the general guidelines adopted by the Committee on 15 October 1991, contained in document CRC/C/5.

2. The report should be read in conjunction with the core document on New Zealand (HRI/CORE/1/Add.33 submitted on 28 September 1993 in accordance with the guidelines contained in document HRI/CORE/1).

I. GENERAL MEASURES OF IMPLEMENTATION

A. Measures taken to harmonize national law and policy with the provisions of the Convention

3. New Zealand ratified the Convention on the Rights of the Child on 13 March 1993, after completing a comprehensive review of existing legislation and policy to ensure that New Zealand law and practice were in compliance with its provisions. No legislative changes were necessary for ratification, although three reservations were entered, about which comment will be made where appropriate in the body of the report.

4. The New Zealand Ministry of Youth Affairs was given responsibility for coordinating New Zealand's reports to the United Nations Committee on the Rights of the Child on its implementation of the Convention. Following ratification, the Ministry advised all government departments to establish processes to ensure that all future legislation and policy changes in their area of responsibility were consistent with the Convention. The Ministry noted that while existing legislation and policy was subject to the three reservations made by New Zealand at the time of ratification, consistent with the Convention, future legislation, policy and practice affecting the interests of children and young people would need to be considered to ensure that New Zealand's obligations under the Convention continued to be fulfilled. Departments were reminded that the standards under the Convention apply also to administrative action. Particular importance was placed upon the need for observance of the Convention in the exercise of ministerial discretion and in official actions.

5. Under the Human Rights Act 1993, the Human Rights Commission has the function of reporting to the Prime Minister on the desirability of legislative, administrative or other action to give better protection to human rights and to ensure better compliance with standards laid down in international human rights instruments. The Commission also has the function of advising the Government on the implications of any proposed legislation or proposed policy that the Commission considers may affect human rights. Since its ratification, the Commission has made reference to the Convention on the Rights of the Child in several submissions to the Government and Select Committees of Parliament on matters relating to children and young people (for example, the Ministerial Committee on Assisted Reproductive Technologies and the Domestic Violence Bill 1994).

6. New Zealand's experience with ratifying the Convention on the Rights of the Child is similar to that with other human rights instruments to which it

is party. Namely, ratification is not the final step in protecting and promoting the human rights concerned, but rather an important step in a process which continues to evolve. The international human rights instruments do, however, provide us with key minimum standards for the protection of human rights, including the rights of the child.

7. New Zealand is fully committed to upholding the Convention and takes very seriously the obligations assumed upon ratification. The terms of the Convention are implemented through both law and policy in New Zealand. However, it is acknowledged that there are a number of areas in which the situation of children and young people in New Zealand needs to be improved. This is indicated in some cases by statistics, and in others by the experiences of individual children and young people. Important examples in the former case are the statistics revealing a high (though now declining) infant mortality rate, and a high rate of youth suicide. With regard to individuals, cases of child abuse continue to illustrate the need for greater efforts both by the Government and the community to guarantee to children a safe and healthy environment. Further details on these matters is provided in the body of the report.

B. Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention

8. The Ministry of Youth Affairs/Te Tari Taiohi was established in 1989. Its functions are, broadly speaking, to represent the youth of New Zealand; to ensure that the concerns of the young people (defined as people from the ages of 12 to 25) of New Zealand are heard by the makers of policies, the providers of services and the drafters of legislation, and to allow young people to make a contribution to New Zealand's cultural, social and economic development. At the time of ratification of the Convention, the Government assigned to the Ministry the responsibility for preparation of New Zealand's periodic reports to the Committee on the Rights of the Child. The Ministry's planning documents for 1995/96 include provision for further work to ensure the ongoing implementation of the Convention in the development of new policies and practices.

9. The adoption of the Children, Young Persons and Their Families Act 1989 was a milestone in the development of policies relating to children and young people in New Zealand. It applies to all children and young people up to 17 years of age and it followed a thorough review of earlier legislation, which included wide consultation throughout the community. In the broadest terms, its object is to promote the well-being of children, young persons, and their families and family groups. In the context of the Convention, an innovation of central importance is the Act's creation of the post of Commissioner for Children. The Commissioner's functions include monitoring all policies and practices developed in the implementation of the Act; and encouraging the development, within the Department of Social Welfare, of policies and services designed to promote the welfare of children and young persons. The Commissioner is also able to investigate complaints made by members of the public on matters relating to children's and young people's welfare. Children's rights are at the centre of many of the complaints received. Responses to complaints may take the form of information about the

complainant's rights (or ways of having their rights addressed); an opinion on the matter under investigation; or a report to relevant bodies and individuals. In addition to the complaints service, the Commissioner's Office handles a growing number of inquiries, including regular inquiries about the Convention and issues relating to children and the law. The Commissioner uses the Convention as a basic standard in considering policy and legislation affecting children.

10. The Department of Social Welfare administers the Children, Young Persons and Their Families Act. The New Zealand Police are responsible with respect to certain enforcement measures and the Department of Justice is responsible for the operation of the Youth Court.

11. Information on implementation measures is provided at relevant points throughout the report. The Crime Prevention Unit, situated in the Department of Prime Minister and Cabinet, takes on a coordinating role for departments and agencies involved in policy development and service delivery for young people at risk of offending. All government departments with a policy role in relation to children and young people contribute to the development of policy, through the Unit, for the handling of young offenders. More information on the youth justice system is contained in section VIII.B commencing at paragraph 340 of the report.

C. Measures to make the principles and provisions of the Convention widely known

12. The question of whether New Zealand should become party to the Convention was not without controversy in the period leading up to the Government's decision. In particular, some New Zealanders were concerned that the Convention would interfere with their rights as parents. A considerable effort was made at that time by the Government through ministerial speeches, media interviews and other information programmes, to raise the level of awareness of all New Zealanders as to the meaning of the Convention and its ratification by New Zealand. It was pointed out that the Convention acknowledges the rights and duties of parents, and that ratification would not mean a change in the relationship between parents and their children. The Ministry of Youth Affairs has also organized a publicity campaign to publicize the Convention throughout New Zealand. In 1994, this included a special feature about the Convention in the Ministry's regular newsletter, "Youth Matters", and the launch of a colourful poster by the Minister of Youth Affairs. More than 28,000 copies of the poster have been distributed to schools and organizations around New Zealand. An information leaflet highlighting key provisions of the Convention has also been distributed. The poster carried the complete text of the Convention on the reverse side.

13. The Office of the Commissioner for Children, in conjunction with UNICEF, produced an attractively illustrated bilingual (English/Maori) version of the Convention in 1992. An advance copy was presented to Te Arikinui Dame Te Atairangikaahu (the Maori Queen), and further copies were distributed to all Members of Parliament. The publication has also attracted a good number of sales.

14. In addition, the Commissioner's Office has produced a classroom teaching resource (jointly with Newspapers in Education, and with support from UNICEF) entitled "Children's rights: Adult responsibilities". The publication consists of a series of photo montages each covering aspects of the Convention and it includes comprehensive teacher notes and extension activities.

15. The information campaign of the Ministry of Youth Affairs has also been aimed at promoting discussion and consultation on the preparation of the present report. The Ministry invited comment from the wider community on the draft report and convened a series of meetings with interested non-governmental organizations prior to finalizing its content. Interest in and reference to the Convention continues to develop within the community. This is evidenced by the increase in correspondence to Ministers of the Crown about particular articles, and public discussion through seminars and on the radio.

II. DEFINITION OF THE CHILD

16. There is no overarching law in New Zealand which defines a "child". The age of majority and therefore full legal capacity is attained at 20 years of age. This is set down in the Age of Majority Act 1970. The Act also provides that where there is no indication of a contrary intention, the terms "adult", "infant", "minor", "full capacity", "majority" and similar terms shall be construed in accordance with the Act's basic provision of the 20 year age of majority. Up until that age, the rights and obligations of children and young people are governed by a range of statutes.

17. The Guardianship Act 1968 defines a child as a person under the age of 20 years. The Act provides parents with rights of custody and guardianship over their children. However, it provides that a custody order in respect of a child of or over the age of 16 shall not be made unless there are special circumstances; and it provides, as a general rule, that applications to enforce custody and access should not be granted contrary to the wishes of a child over 18. The provisions relating to guardianship can be terminated by the marriage of a child under 20 or by order of the Court. Custody is defined in the Guardianship Act as the right to possession and care of a child, and guardianship includes the right of control over the upbringing of a child. The Adoption Act 1955 also defines a child as a person under the age of 20 years, and the Adult Adoption Information Act 1985 defines an adult as a person who has reached that age.

18. A further series of statutes specify age as the benchmark against which a range of entitlements are provided to children. Entitlements increase with the chronological age of the individual until at 20 years he or she has full legal capacity. The ages specified in the various statutes depend on the specific purposes of those Acts. Some entitle children and young people to make decisions or take action in their own right. Other statutory provisions recognize their vulnerability and provide special protection for them.

19. For example, distinctions are made between the term "child" and "young person" for the purposes of care and protection and of youth justice under the Children, Young Persons and Their Families Act 1989, "child" being defined as a boy or girl under 14 years and "young person" as a boy or girl over the age

of 14 years but under 17 years. The Marriage Act 1955 uses the term "minor" to specify the age at which a person under 20 years may marry with parental consent (at age 16 years). For the purposes of the right to vote, the Electoral Act 1956 defines the term "adult" to mean a person of or over the age of 18 years.

20. Under the Human Rights Act 1993, which repealed the Human Rights Commission Act 1971, age remains one of the prohibited grounds of discrimination (first introduced, but only in respect of employment, in a 1992 amendment to the Human Rights Commission Act 1977). "Age" is defined as having a lower limit of 16 years. This age was chosen as being consistent with the current school-leaving age. Further detail on the Human Rights Act is provided in the core document and at various points in the report, particularly in section III in relation to the implementation of article 2 at paragraph 36 and in the third periodic report of New Zealand under the International Covenant on Civil and Political Rights (CCPR/C/64/Add.10).

21. A person who has reached the age of 16 can give consent to medical or dental treatment or surgical intervention without requiring parental consent.

22. Consent at a younger age is contingent upon a sufficient understanding for that consent to be fully informed. However, a female can consent to having an abortion at any age.

23. In New Zealand, schooling is compulsory for everybody between their sixth and sixteenth birthday, but it is possible to leave school earlier, with the permission of the school principal (and on application from the parent). The school-leaving age is to be raised to 17 with effect from 1 January 1998. Full primary and secondary education is available from the age of 5, the upper limit being 19 years of age.

24. There is no minimum age in New Zealand governing entry into full or part-time employment. However, a provision in the Education Act 1989 prohibits the employment of any person under 16 years of age within school hours.

25. Health and safety in employment is principally governed by a single statute, the Health and Safety in Employment Act 1992. This statute places duties upon both employers and employees. Its intention is to achieve a move from the prescriptive standards set out in earlier legislation, to performance standards which describe a safety objective without prescribing how it should be achieved. The Act allows regulations to be made specifying minimum ages for carrying out different kinds of hazardous work, and for entry into particular occupations. The Explosives Act 1957 prohibits a person under 18 working in a place where explosives are made or stored.

26. For the purposes of the Defence Act 1990, a minor is a person under the age of 18 years. A person under 18 cannot enlist if a parent or guardian objects. Nor is a person under 18 liable for active service except in the Navy, where the applicable age is 16 years and 6 months. With parental consent, the age at which young people are enlisted is 16 years, 6 months (for the Navy and the Airforce), and 17 years and 6 months for the Army. New Zealand does not have conscription into the armed forces.

27. Under the Crimes Act 1961, it is an offence for a male to have a sexual relationship with anyone under 16 years of age. A female of or over the age of 21 commits an offence if she engages in sexual relations with a girl under the age of 16 years. A female may also be charged with the offence of indecent assault against another female. Certain defences are available in limited circumstances, for example where the male is younger than his partner and he or she is between 12 to 16 years of age and consented to the act; or where the girl is between 12 and 16 years of age and is married to the male.

28. There is no minimum legal age at which a person may give evidence in court. Evidence is given on the understanding that a child or young person has sufficient understanding of the process, and in certain cases special protection such as video-taped evidence is allowed. Children under 12 years are not required to swear on oath for their evidence to be accepted.

Minimum age below which children shall be presumed not to have the capacity to infringe the penal law

29. New Zealand law provides limits on the age at which criminal liability can be placed upon children. No person under 10 years of age can be convicted of an offence (sect. 21 of the Crimes Act 1961). A child between the ages of 10 and 14 can only be prosecuted for murder, manslaughter, or a minor traffic offence and only if the child knew that the act or omission was wrong or that it was contrary to the law (sect. 22 of the Crimes Act 1961 and sect. 272 of the Children, Young Persons and Their Families Act 1989).

30. The Criminal Justice Act 1985 (sect. 142 (1)) provides that no person under the age of 16 shall be remanded to a penal institution pending the hearing or trial of any charge or pending sentence, and between 16 and 17 years of age only when charged with or convicted of a purely indictable offence (sect. 142 (2)). The same Act provides that no court shall impose a sentence of imprisonment on a person who at the time of conviction is under 16 years except for a purely indictable offence (sect. 8) and provides that persons under the age of 17 years may be sentenced to corrective training instead of imprisonment.

31. The consumption of alcohol by minors in private homes is not regulated by law. The Sale of Liquor Act 1989 regulates the sale and supply of liquor from licensed premises. The sale of liquor to a person under 20 years of age is prohibited, although there are exceptions (for example, a person over 18 and under 20 years of age may drink alcohol in a "restricted area" on licensed premises if accompanied by an adult spouse or guardian). The Summary Offences Act 1981 makes it an offence for anyone under 20 to drink alcohol in a public place unless accompanied by an adult spouse, parent or guardian. The purchase and use of tobacco is limited to those 16 years of age and over although the Government has recently proposed that the limit be raised from 16 to 18 years of age. Narcotics and other drugs are controlled by the Misuse of Drugs Act 1975 and the Misuse of Drugs Regulations 1977. Further discussion of the means of this control occurs under article 33, Drug abuse, commencing at paragraph 376 below.

III. GENERAL PRINCIPLES

32. The principles discussed in this section of the report are reflected in important ways in many of the later sections relating to specific areas of the lives of children in New Zealand. Three major pieces of legislation, the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the Children, Young Persons and Their Families Act 1989, embody essential principles of human rights, including freedom from discrimination and protection of the child's best interests, and will be referred to frequently in subsequent sections. Additional detail on the general observation of human rights in New Zealand may be found in the Government's periodic reports on the implementation of other human rights instruments to which it is party, in particular the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

33. Particular attention is drawn to the information provided in those reports, and in the core document, about the Treaty of Waitangi. As the founding document of New Zealand, the Treaty of Waitangi plays an increasingly important role in present-day New Zealand society. It forms the basis for the relationship between the Maori people (tangata whenua or indigenous people) and people of European and other descent who form the majority of the population. Information in relation to Maori children and young people is provided at various points throughout the report, in addition to the information requested in regard to article 30 (children of minorities or indigenous populations).

34. Important mechanisms for helping secure the application of the principles discussed in this part of the report are the reporting and monitoring functions of the Human Rights Commission (set out in the Human Rights Act 1993) and of the Commissioner for Children (under the Children, Young Persons and Their Families Act 1989), which have been described in section I, paragraphs 5-9 above.

A. Non-discrimination (art. 2)

35. The New Zealand Bill of Rights is contained in the New Zealand Bill of Rights Act 1990. Details of the enactment and status of the Act are contained in New Zealand's third periodic report under the International Covenant on Civil and Political Rights. The Act applies to the actions of the Government or by any person in the performance of a public function or duty conferred by law. The Act affirms the right of everyone to freedom from discrimination on all the grounds set out in the Human Rights Act 1993 (see following para.). Measures taken in good faith for the purpose of advancing the situation of people disadvantaged because of discrimination do not constitute discrimination, however. It also affirms the right of a person belonging to an ethnic, religious or linguistic minority in New Zealand not to be denied the right to enjoy its culture, practise its religion or use its language. These rights are subject only to such reasonable limits prescribed by law

as are demonstrably justified in a free and democratic society. The Attorney-General must report to Parliament where any draft legislation contains a provision inconsistent with the Bill of Rights.

36. The Human Rights Act 1993 (of which the long title includes the aim "to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights") specifies as prohibited grounds of discrimination: sex (which includes pregnancy and childbirth), religious belief, ethical belief, colour, race, ethnic or national origins (including nationality or citizenship), marital status, disability, age (lower limit 16; until February 1999 the upper age limit is that at which a person becomes eligible for national superannuation and after that date there is no upper age limit); political opinion, employment status, family status and sexual orientation. Discrimination is deemed to be unlawful in: employment matters; access to places; vehicles and facilities; provision of goods and services; provision of land, housing and other accommodation; access to educational establishments; qualifying bodies and vocational training bodies; industrial and professional associations; and partnerships. Racial harassment and sexual harassment are also outlawed. The Act provides for the continuation of the Human Rights Commission (para. 5 above) and of the complaints procedure established in the Human Rights Commission Act of 1977. Complaints of unlawful discrimination are investigated by the Complaints Division of the Commission. If a complaint cannot be settled by conciliation the Complaints Division may refer the complaint to the Proceedings Commissioner and civil proceedings may be instituted before the Complaints Review Tribunal where various forms of redress, including damages, may be sought. Children may make complaints to the Human Rights Commission. If a party is dissatisfied with the decision of the Tribunal that party may appeal to the High Court against the whole or part of the decision. There is also a provision for appeal to the Court of Appeal on questions of law.

37. The Act makes two exceptions where age discrimination may be lawful: (a) in refusing work to a person, or in retiring an employee, where being an employee in a particular age group is a genuine occupational qualification for the position; and (b) in paying a person under 20 years of age at a lower rate than a person in job circumstances that are substantially similar. On the other hand, it is not unlawful to provide special facilities for people below a particular age or in a particular age group, for example in targeting training programmes to a particular age group.

38. An illustration of the complaints procedure (in the area of discrimination in education on the basis of race) is the Human Rights Commission's investigation in 1991 of complaints from two Maori students about restrictions on their wearing carved greenstone and whalebone taonga (lit. treasures, here pendants) at their school. The complaints were considered on the basis of whether it was unlawful under the Human Rights Act for a school to admit a student on less favourable terms and conditions than would otherwise be available, or to subject a student to detriment by reason of the student's race. In each case, the Commission formed the opinion that the failure to allow the students to wear their taonga openly amounted to subjecting them to detriment because of their race, and further that this

refusal amounted to discrimination, as the Maori students were being offered less favourable terms and conditions, because of their race, than the other non-Maori students.

39. Section 151 of the Human Rights Act makes the Act subordinate to other Acts and regulations unless the contrary is expressly provided for in the Human Rights Act, and exempts anything done by or on behalf of the Government in relation to the new grounds of proscribed discrimination introduced in the 1993 Act (including age). This section expires on 31 December 1999 and, in the meantime, the Human Rights Commission is required to review existing Acts and regulations and any policy and administrative practice of the Government for inconsistencies with the Human Rights Act 1993 and to report to the Minister of Justice by 31 December 1998.

40. One of the underlying principles of the Children, Young Persons and Their Families Act 1989 is that it should be responsive to the indigenous culture, i.e. that it should ensure that the rights of children and young people are protected equally irrespective of their cultural background. The Act's objects promote non-discrimination. They include the establishment and promotion of services that are appropriate having regard to the needs, values and beliefs of particular cultural and ethnic groups. An important illustration of this is the Act's provision for the child or young person to be considered as part of the family group that is appropriate to him or her ("parents, family, whanau, hapu, iwi, and family group"). The term "family group" includes an extended family and is based on a biological or legal relationship between a child or young person and at least one adult member. Services are to be provided by persons and organizations sensitive to the cultural perspectives and aspirations of different racial groups in the community. Social workers are directed to obtain cultural advice when they work with families of a culture other than their own. (A common source of cultural advice is through the Care and Protection Resource Panels set up under the Act (sect. 428 (3)) to provide input from the wider community.)

41. The Status of Children Act 1969 brought legal discrimination against children born out of wedlock to an end in New Zealand. Under the Act, all children are given equal status. However, the Act does not apply with regard to instruments executed and intestacies occurring before the Act came into force. A 1987 amendment to the Act clarified the legal status of children conceived by the use of donated sperm, ova, or embryos. The amendment provides that the child's social parents are to be his or her legal parents.

B. Best interests of the child (art. 3)

42. The general principles of the Children, Young Persons and Their Families Act 1989 include the provisions that:

(a) Consideration must always be given to the effect of any decision about a child or young person on his or her welfare and interests; and

(b) The welfare and interests of the child or young person are to be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of the Act, in the administration or application of the Act's care and protection provisions.

43. Previously, the principle in (b) above was worded to indicate that the welfare and interest of the child or young person should be the deciding factor where a conflict of interest arose. An amendment to the Act in 1994 changed the wording to that indicated in (b) above to reinforce the primary consideration to be given to the interests of the child. (The change does not apply to youth justice work. In youth justice, a balance must be made between the needs and rights of society and of the victim of any offence, and the needs and rights of the child or young person. Further detail on this aspect is provided under section VIII.B, paragraph 340 of the report, where the administration of juvenile justice and the implementation of article 40 of the Convention is discussed.)

44. The significance of these provisions will become clearer on examination of later sections of the report. These illustrate the central importance of the Children, Young Persons and Their Families Act for all actions concerning the care, protection and control of children and young persons undertaken by social welfare institutions, courts of law or administrative authorities.

45. The Guardianship Act 1968 provides that, in proceedings relating to custody, guardianship, access or the administration of any property belonging to or held in trust for the child, the court is to regard the welfare of the child as the first and paramount consideration. It also states that the court will not enforce any agreement between the father and the mother of the child with respect to the custody, upbringing of, or access to the child if it considers that would not be for the child's welfare.

46. Under the Adoption Act 1955, the Court must be satisfied that the welfare of the child will be promoted by the adoption, taking account of the child's wishes, age and understanding. (This is one of three considerations of which the Court must be satisfied before approving the adoption. The Courts have increasingly tended to give attention to the best interests criterion.) Additional information on adoption issues is provided in section V.G, commencing at paragraph 154 of the report, relating to article 21.

47. The Family Proceedings Act 1980 prevents the Court from making an order dissolving a marriage unless it is satisfied that satisfactory arrangements have been made for the welfare of every child of the marriage under 16 years of age (except in special circumstances).

48. When parents or others responsible fail to provide adequate care for a child, Parts II, III and VII of the Children, Young Persons and Their Families Act set out the legislative basis for statutory care and protection interventions under the Act. These are based on the Act's general objects to promote the well-being of children, young persons and their families and family groups by, inter alia, assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect, and deprivation; and by providing for their protection from such harm. Both the Police and the Department of Social Welfare (Children and Young Persons Service) investigate reports of children at risk. They take whatever action is appropriate in the circumstances, bearing in mind the principles of the Act. Particular concerns are the child's right to be protected, and to be connected to his or her family; and to keep any intervention to the minimum necessary to achieve care and protection objectives. Work focuses on

protecting the child from abuse, ensuring the adequacy and stability of the care arrangements, and strengthening the family. Further detail on the care and protection system is given later in the report under section V, paragraphs 102-103, addressing the family environment and alternative care, and under section VI, commencing at paragraph 194, addressing basic health and welfare.

49. The Children, Young Persons and Their Families Act 1989 in Part VIII makes provision for voluntary sector organizations to be involved in providing care and protection services under the Act for children, young people and their families. The New Zealand Community Funding Agency of the Department of Social Welfare is responsible for setting approval standards and the monitoring of such organizations. A formal approval and monitoring process is followed. Under the Act, organizations may be approved as Child and Family Support Services, Iwi Social Services, or Cultural Social Services.

C. The right to life, survival, and development (art. 6)

50. The right to life is affirmed as a civil and political right in the New Zealand Bill of Rights Act 1990 (sect. 8), which states: "No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice."

51. A number of provisions of the Crimes Act 1961 also support the implementation of this article. Violence or abuse towards children is addressed in sections outlawing infanticide, assault on a child, incest and other sexual abuse of children and cruelty to a child, as well as through the Act's general provisions relating to murder, manslaughter, and various types of assault. Failure by a parent (or person in place of a parent) to provide a child under the age of 16 years with the necessaries of life is an offence, and the person is held criminally responsible if this causes the death of the child or if it endangers the child's life or permanently injures his or her health. It is also an offence unlawfully to abandon or expose a child under the age of 6 years old. The killing of a child once it has proceeded from the mother is considered homicide under the Act, if the child dies in consequence of injuries received before, during, or after birth. Provision is made in the Contraception, Sterilisation and Abortion Act 1977 for the lawful termination of a pregnancy where certain conditions are met.

52. An employer who has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of 16 is under a legal obligation to do so, and is criminally responsible if failure to do so causes the death of the servant or apprentice, or if his or her life is threatened or health permanently injured by such failure. For a wider discussion of the protection of children from abuse or neglect, reference may be made to the report under section V.I, commencing at paragraph 169, with regard to articles 19 and 39 of the Convention.

53. Two issues which are important in the New Zealand context with regard to the survival and development of children are infant mortality and youth suicide. In both these areas, statistics point to high rates, which are a matter of concern to the Government and the general public. Infant mortality has been the target of a concerted campaign which now appears to be achieving

the desired result of a consistent decline in the rate of infant deaths. More information on this, with particular regard to the cot death (Sudden Infant Death Syndrome) prevention campaign, is provided in the report under section VI. The problem of youth suicides received a degree of public attention in mid-1994 with the release of a UNICEF report ("The Progress of Nations") which, inter alia, showed New Zealand's rate of suicides among young people aged between 15 and 19 to be the highest in the industrialized world. (In 1991, the rate reached 15.7 per 100,000, compared with 5.8 per 100,000 in 1970.)

54. The Government is addressing the problem in a range of ways. A special task force on Youth Mental Health and Suicide Prevention has placed emphasis on coordinating services available to youth through various government and non-government agencies. Its report recommends the development of guidelines on suicide prevention for all educational institutions and the development of support systems in schools, to address mental, emotional, behavioural and addiction concerns. Health education resources are being produced by the Ministry of Education on an ongoing basis to support teachers and students in dealing with a range of health issues in school. In addition, provision is made to focus on mental health issues through professional teacher training and specialist staff. The basic entitlement for every secondary school includes staffing provision for guidance counsellors and teachers. There is also a range of support services available to schools to help them in this area. The Special Education Service (see para. 201 below for details on this agency) deals with suicide prevention in a variety of ways, which may include the provision of materials to schools. A strategy report issued by the Ministry of Health listed as its priorities for mental health, young people, Maori, and people with severe psychiatric disabilities. The Government's budget for 1994/95 allocated an extra $20 million for all mental health funding for community services.

D. Respect for the views of the child (art. 12)

55. As noted in paragraph 45, the Guardianship Act 1968 provides that the first and paramount consideration where custody and guardianship are at issue is the best interests of the child. Also, having ascertained what they are, the court must take account of the child's wishes to the extent it thinks fit, bearing in mind the child's age and maturity. No direction is given in the Act as to how the child's wishes should be ascertained. This may be done in a variety of ways. For example, the judge may interview the child in chambers, or the court may appoint counsel for the child and request counsel to ascertain the child's wishes. The Act also provides for the court to have a psychological report on a child prepared. The psychologist preparing the report can be directed by the court to ascertain the child's wishes and outline them in the report. In situations such as where custody and/or access is not disputed and the court makes orders with the consent of both parties an appointment of counsel for the child may not be made.

56. As noted in the earlier section on the definition of a "child", other relevant provisions of the Guardianship Act are that no custody order may be made with respect to a child of 16 years or over except in special circumstances; the consent or refusal of a child of 16 or more to a medical,

surgical or dental procedure or to a blood donation carries the same weight as that of an adult; and a person of any age may consent to or refuse an abortion, as if she were an adult.

57. One of the guiding principles of the Children, Young Persons and Their Families Act 1989 (sect. 5 (d)) is that consideration should be given to the wishes of the child or young person, and that those wishes should be given appropriate weight. Another principle (sect. 5 (e)) is that endeavours should be made to obtain the support of the child or young person himself or herself to any actions taken under the Act.

58. The child or young person is a statutory member of the Family Group Conference (FGC) (the main mechanism provided under the Act for the resolution of problems involving children and young people whether problems of care and protection or of youth justice) and is entitled to attend unless formally excluded by the Coordinator (the FGC is described in more detail below, commencing at para. 182). The Care and Protection or Youth Justice Coordinator must also endeavour to ensure that the child's or young person's views are obtained and clearly presented at the Family Group Conference. The Coordinator must also ensure that the child or young person feels adequately supported to enable them to express their opinions.

59. Where a child or young person is the subject of court proceedings under the Children, Young Persons and Their Families Act 1989 it is mandatory for the child or young person to be represented by a barrister or solicitor in care and protection proceedings; or by a youth advocate where he or she appears before a Youth Court charged with an offence.

60. The youth justice provisions of the Act take account of the vulnerability of children and young people during any investigation. The FGC allows the full participation of the child or young person who is alleged to have committed an offence. He or she has the opportunity to speak to those gathered, including the victim, and any decisions, recommendations or plans made at the conference must have the agreement of the child or young person. (More detail on these matters is provided in the report under sect.VIII.B (paras. 342-351), with regard to the implementation of article 40.)

61. The most recent research shows that one third of young people felt involved during the FGC (Family Victims and culture: Youth Justice in New Zealand by Gabrielle M. Maxwell and Allison Morris). While many children and young people find it extremely difficult to make meaningful statements in such circumstances, it is also accepted that the behaviour of the professionals present can affect the extent to which they become actively involved. This issue is being addressed through a variety of interaction strategies aiming at encouraging the young person's verbal participation.

62. The Children, Young Persons and Their Families Act does not provide a separate or specific procedure for the hearing of complaints or views of children or young people who are placed in residences, institutions, foster care or other types of out-of-family care. The Residential Care Regulation 1986 relating to Department of Social Welfare residences do, however, contain complaint provisions. As well, the Department has developed a residential care code of conduct promoting complaint procedures for children

and young people in residences. A number of provisions in the Act enable placement decisions to be reviewed. Those taking actions under the Act are required to have regard to the principles set out in the Act. This includes the principles at section 5 (d) and (e), as explained in paragraph 57.

63. A number of statutes allow for the court to appoint a barrister or solicitor as counsel for the child who is involved in proceedings if it is considered that the circumstances warrant such an appointment. One example is that provided in paragraph 59. Counsel for the child must regard the welfare of the child as the first and paramount consideration. (The duty of the court and counsel to explain to an involved child proceedings under the Children, Young Persons and their Families Act and to encourage and assist the child or young person to participate, is also spelled out in the Act (sects. 10 and 11).) Other examples are the Guardianship Act, the Matrimonial Property Act and the Family Proceedings Act. In the 1992-1993 financial year, counsel for the child was appointed 2,963 times. The role of counsel is not defined in the various statutes. The role is the subject of some debate within the legal profession and has not been without criticism, sometimes directed at the adequacy of representation. In practice different approaches may be adopted by counsel although it is general practice for the wishes of the child or young person, and the child or young person's support for any proposed action under the Act, to be obtained. A New Zealand Law Society training programme describes counsel for the child as having various functions including "information gatherer/assessor, mediator/negotiator, case coordinator, child protector, and representative and advocate for the child". Anyone seeking to be appointed as a counsel for the child may attend this training programme which is presided over by a senior counsel for the child, a report writer, and a psychologist.

64. Application may be made to the court for the appointment of a lay advocate where a child or young person appears before a Youth Court. The appointment may be made even where the child or young person is also represented by a barrister/solicitor. The principal function of a lay advocate is to ensure that the court is made aware of all cultural matters that are relevant to the proceedings and to represent the interests of the child's or young person's whanau, hapu, iwi (or their equivalent, if any) to the extent that those interests are not already represented in the proceedings.

65. There is no age limit under the Human Rights Act 1993 for making complaints of unlawful discrimination or for making representations under Part I of the Act. Accordingly children and young people have the opportunity of expressing their opinions and views as part of the process by which complaints are considered. The Bill of Rights provision in relation to freedom of expression is discussed under article 13, at paragraph 76 below.

66. The Education Act 1989 makes provision for the involvement of parents in matters in relation to the suspension and expulsion of students. Boards of trustees and principals have responsibility for implementing the Act, and would be able to involve students in a suspension process if they chose. An information kit which sets out student rights at school has been published by the Office of the Commissioner for Children.

67. The views of children and young people may also be reflected in the policy advice given to the Government by the Ministry of Youth Affairs and the work of the Commissioner for Children. The Youth Law Project, an Auckland-based community law centre, concentrates on advocacy work on behalf of children and young people. there are other non-governmental agencies also providing some degree of advocacy or support for the position of children and young people.

IV. CIVIL RIGHTS AND FREEDOMS

68. Several of the rights considered under this section are guaranteed under the New Zealand Bill of Rights Act 1990. to which reference has been made earlier. Other important pieces of legislation in this area are the Human Rights Act 1993, the Privacy Act 1993 and the Guardianship Act 1968. For information on the legal structure within which civil rights and freedoms are protected in New Zealand, reference may be made to the core document, and to New Zealand's periodic reports on implementation of the International Covenant on Civil and Political Rights.

A. Name and Nationality (art. 7)

69. The Births and Deaths Registration Act 1951 requires notice of the birth of a child to be given to the Registrar and allocates responsibility for providing information in relation to the birth of a child. The Act requires notice of the birth to be provided within 48 hours if it occurs in a borough and within 7 days in any other case. Where a newborn child is found exposed or abandoned, any person in whose charge the child may be placed shall give to the Register within seven days of the finding of the child such information of the particulars required to be registered as the person possesses. There is no requirement that the child's own name be recorded on the register, and provision is made for his or her given name to be added to the register after the initial registration. There is also provision for a child's registered name to be changed at a later date.

70. The Citizenship Act 1977 provides that every person born in New Zealand on or after 1 January 1949 is a New Zealand citizen by birth, except in very limited circumstances. Every person born in New Zealand on or after 1 January 1978 is a New Zealand citizen by birth if he or she would otherwise be stateless. Children who are born in New Zealand cannot be deprived of their citizenship until they reach 18 years of age. After this age they can be deprived of citizenship if they hold another nationality and they have acted contrary to the interests of New Zealand. Children who have been granted citizenship may also be deprived for this reason, or if their grant was obtained by fraud, false representation, wilful concealment of relevant information or by mistake.

71. Since 1992, children under 16 years have been issued with their own passports (instead of their names being "endorsed" on either of their parents' passports, as previously). The written consent of a parent or guardian is required for the granting of a passport to a person under 16 years of age.

72. Children adopted in New Zealand on or after 1 January 1949 are deemed to be New Zealand citizens by birth according to the provisions of the

Citizenship Act 1977. Adoption of children outside New Zealand may be recognized by New Zealand law subject to certain conditions including conditions relating to the legality of the adoption order in the country in which it was made and the rights of the adoptive parents in the country of adoption. If one of the adopting parents is a New Zealand citizen otherwise than by descent, a recognized overseas adoption may confer New Zealand citizenship status. Citizens by descent cannot pass citizenship on to a child adopted overseas, however. Adoption orders confer the surnames of adoptive parents on adoptive children, with the first names fixed by the court as requested by the applicants.

73. The Adult Adoption Information Act 1985 provides that adopted persons, once they reach the age of 20, may trace their natural parents.

B. Preservation of identity (art. 8)

74. The decision as to a child's name is a right of guardianship. Under the Guardianship Act 1968 (referred to in para. 17 above, and in para. 104 below), guardianship means the custody of the child and the right of control over his or her upbringing. If there is more than one guardian, decisions are to be made jointly. If a dispute arises over a child's surname, any of the guardians may apply to the court for direction under the Guardianship Act, and the court may make an order. The welfare of the child must be regarded as the first and paramount consideration of the court in making such an order.

75. Particular considerations are taken into account in deciding the question of a child's surname when his or her parents' marriage is dissolved if the mother is the custodial parent and has remarried and changed her surname. In this case the Court considers the two basic interests of the child to be: (a) to feel secure and happy in his or her custodial family, and (b) to avoid confusion over his or her identity and origins and to maintain or establish valuable links with his or her father. Where a child has a meaningful relationship with his or her father, a change of surname against the father's wishes is unlikely to be permitted. If this is not the case, the emphasis will shift to the mother's reconstituted family and the name may be changed. There is no legal requirement for the child to adopt the father's surname.

C. Freedom of expression (art. 13)

76. The New Zealand Bill of Rights Act 1990 (sect. 14) affirms the right of everyone to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind and in any form. The Official Information Act 1982 is designed to make official information more freely available and to provide proper access by each person to official information (within appropriate constraints). The Privacy Act 1993, which is discussed in more detail under article 16, at paragraph 91 below, provides individuals, including children, with the right of access to all personal information held about themselves, unless access can be denied for any one of the specific reasons set out in the Act. In the context of health information, governed by the Health Information Privacy Code 1994 (art. 16 again, refers), representatives of a child aged under 16 do not have rights of access to

health information about a specific child, but the relevant agency has a discretion to disclose information to a representative if the child concerned is unable to exercise his or her own rights under the Code.

77. The Human Rights Act 1993 (in its sects. 61, 62, 63 and 131) restricts freedom of expression only in so far as it outlaws racial and sexual harassment and incitement to racial disharmony in the areas covered by the Act, where these take the form of verbal or written expression.

D. Access to appropriate information (art. 17)

78. In New Zealand, freedom of the press is a long-established tradition. There is an active mass media sector, which plays an important part in promoting the involvement of all New Zealanders in cultural life. The press operates freely, subject to the limitations and restrictions imposed by common law and statute, such as the law relating to defamation, blasphemy or obscenity, and human rights legislation.

79. Books specially written for children and young people are available throughout New Zealand and are well represented in schools and public libraries. Excellence in both the range and the quality of children's books is supported through a national award promoted by the New Zealand Booksellers' Association. This is organized as a nationwide celebration of children's books promoting the importance and enjoyment of books and reading. The festival provides a framework within which groups organize and participate in reading, writing and illustrating activities involving children and young people in the classroom or the local library. Awards are made in four categories: junior fiction, senior fiction, picture books and non-fiction.

80. Learning Media Ltd. is a Crown-owned company which works on contract to the Ministry of Education, publishing materials for educators to support the National Education Guidelines. The Ministry also contracts with other commercial companies for these services.

81. New Zealand on Air (formerly the New Zealand Broadcasting Commission) administers the public broadcasting fee and has among its functions under the Broadcasting Act 1989 to ensure that a range of broadcasts is available to provide for the interests of women, children, people with disabilities and minorities within the community, including ethnic minorities. It is also charged with reflecting and developing New Zealand culture by promoting programmes about New Zealand and New Zealand interests, and by promoting Maori language and Maori culture. A network of 22 Maori radio stations funded from the public broadcasting fee has been established.

82. Broadcasting standards are regulated by the Broadcasting Standards Authority, an independent body established under the Broadcasting Act. The Authority's functions include the development of codes in conjunction with broadcasters relating to the protection of children, the portrayal of violence and restrictions on the promotion of liquor and presentation of appropriate warnings on programmes. The Authority is also charged with hearing and determining complaints against breaches of standards.

83. Codes containing reference to children include the need for broadcasters to be mindful of the effect of television programmes on children during their normally accepted viewing time. This includes the effect of trailers, the broadcasting of disturbing news and current affairs items, scenes of domestic and social friction, maltreatment of animals or children, and violence in cartoons or portrayals of violence likely to disturb or alarm children.

84. New Zealand is undergoing a far-reaching change in its censorship policy and practice. The Films, Videos and Publications Classification Act 1993 has from 1 October 1994 replaced the Films Act 1983, the Video Recordings Act 1987 and the Indecent Publications Act 1963 with a single censorship regime. The Act was passed after considerable public interest and is based on many of the recommendations of the 1989 Committee of Inquiry into Pornography.

85. The official term for banned material is a classification called "objectionable". For the first time, the possession of objectionable material has been made an offence, partly as a reaction to concerns over the spread of child pornography.

86. The Act establishes the Office of Film and Literature Classification which will have responsibility for classification of all printed and visual material. The Office will classify publications as "unrestricted", "objectionable", or "objectionable except in a range of circumstances". These circumstances can include the restriction of the availability of publications until a person has attained a specified age; the restriction of the availability of publications to specified persons or classes of persons; and the restriction of the availability of publications for specified purposes.

E. Freedom of thought, conscience and religion (art. 14)

87. The right to freedom of thought, conscience, religion and belief (including the right to hold and adopt opinions without interference) is guaranteed to everyone under section 13 of the New Zealand Bill of Rights Act 1990. In their role as guardians, parents may provide guidance to the child in the exercise of his or her freedoms under article 14.

88. As noted in earlier sections, the Human Rights Act 1993 prohibits discrimination on the grounds of (inter alia) religion, ethical belief, or political opinion. Information on censorship laws in New Zealand, particularly as they relate to the protection of children from objectionable material, is given in the preceding paragraphs.

F. Freedom of association and of peaceful assembly (art. 15)

89. The New Zealand Bill of Rights Act provides that everyone has the right to freedom of association (sect. 17) and the right to freedom of peaceful assembly (sect. 16). Under the youth justice provisions of the Children, Young Persons and Their Families Act 1989, the Court may in certain circumstances impose a condition on a supervision order that a young person not associate with a specified person, or with persons of a specified class.

90. It is illegal to discriminate on the grounds prohibited by the Human Rights Act (para. 36) against anyone who wishes to belong to a professional or

trade association or organization of employers or employees. Provisions in the Employment Contracts Act also protect the freedom of association of employees.

G. Protection of privacy (art. 16)

91. The Privacy Act 1993 establishes 12 information privacy principles (derived from Organization for Economic Cooperation and Development guidelines) dealing with the collection, security, use and disclosure of information about individuals, access to and correction of such personal information and the assignment and use of unique identifiers. In so far as the Act places no age restrictions on the term "individual", it affords both children and adults protection from unlawful or arbitrary interferences with privacy. However, it does provide that in the case of individuals under the age of 16, access to their own personal information may be denied them if its provision would be contrary to their interests. Certain other restrictions are placed upon the individual's right of access to information at any age, such as for example where disclosure might prejudice his or her health; or where it would involve the unwarranted disclosure of the affairs of another individual. There are other grounds of refusal which could be applicable to children or young people.

92. New Zealand has had a Privacy Commissioner since 1991, who is also a member of the Human Rights Commission. The Privacy Act sets up a mechanism for dealing with complaints alleging an interference with the privacy of the individual. Following the making of a complaint, the Privacy Commissioner may investigate it, act as a conciliator, call compulsory conferences, and attempt to secure a settlement and assurance against any repetition. The complaint may go to the Complaints Review Tribunal where various forms of redress, including damages, may be sought.

93. Children may make complaints to the Privacy Commissioner but more usually an adult would make a complaint on behalf of the child. In addition, the Commissioner may accept complaints from persons other than the aggrieved individual. For example, if (as may be likely) a child is unable to make a complaint because of his or her youth, an advocate, adult or friend might complain on the child's behalf.

94. The Commissioner's statutory functions also include promoting an understanding and acceptance of the information privacy principles, receiving and inviting representations from members of the public, undertaking educational programmes, making public statements, and inquiring generally into matters that may threaten individual privacy. In addition, the Commissioner may issue Codes of Practice which modify the application of the information privacy principles of the Act in order to target them more specifically at certain areas. To date, two Codes of Practice have been issued. A Code dealing with the Government Computer Services Ltd. and the Health Information Privacy Code 1994. A relevant point of difference between the latter Code and the Privacy Act is its provision that if a child is under the age of 16 years, the parent or guardian is his or her representative. A representative may exercise certain limited rights on behalf of an individual where that individual is unable to do so personally. However, where a child under 16

does have sufficient maturity and capacity to exercise his or her own rights, the parent or guardian will not be able to act automatically in his or her stead.

95. Under the Criminal Justice Act 1985, it is prohibited to publish the name of any person upon or with whom specified sexual offences have been committed (or allegedly committed), or any name or particulars likely to lead to the identification of that person, unless he or she is 16 years of age or over, and publication is permitted by court order. The Act also prohibits publication of the name or any particulars likely to lead to the identification of any person under the age of 17 years who is called as a witness in criminal proceedings.

96. The publication of reports of proceedings under the Family Proceedings Act 1980, the Children, Young Persons and Their Families Act 1989, and the Guardianship Act 1968 are restricted. Proceedings under all three Acts are closed to the public and the court may hear them in private or exclude any person from the court.

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

97. In 1989 New Zealand enacted the Crimes of Torture Act and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The torture of a child or the cruel treatment or punishment of a child or young person is prohibited. In the family context, such behaviour by a family member against a child or young person can constitute grounds for the child to be deemed in need of care and/or protection, and therefore from the State to intervene. Children and young persons who are in the care of the Department of Social Welfare are protected by the Residential Care Regulations (1986) and the Code of Practice for Residential Care Services (1991).

98. The Commissioner for Children also has jurisdiction to inquire into complaints falling into this area. An example is an inquiry the Commissioner conducted following receipt of a complaint that a number of pupils at a school had been made by teachers to remove their clothing down to their underwear in an apparent search for drugs. The Commissioner reported that the procedure used was "degrading" and failed to meet the standards of the New Zealand Bill of Rights Act 1990, and recommended steps to avoid repetition.

99. As a result of the adoption of the Abolition of the Death Penalty Act 1989, there is no capital punishment in New Zealand. Limitations on criminal liability and imprisonment are referred to at paragraphs 29 and 30 above. The Criminal Justice Act 1985 provides that an offender subject to an indeterminate sentence (life imprisonment or a sentence of preventive detention) is eligible to be released after 10 years of that sentence. In any event, a sentence of preventive detention cannot be imposed on a person less than 21 years of age.

100. New Zealand's initial report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was submitted in

July 1992 and considered by the Committee against Torture in November 1992. It provides comprehensive information on measures in place in New Zealand to prevent the occurrence of acts of torture.

101. Reference may also be made to the present report under section VIII.B, paragraph 340, describing New Zealand's youth justice system.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

102. The Children, Young Persons and Their Families Act 1989, which is described in more detail commencing at paragraph 174 below, was adopted on the basis of a comprehensive review of existing legislation (in particular, the Children and Young Persons Act 1974) relating to children and young persons in need of care or protection, or who offend against the law. Consultation over the reforms was particularly extensive with the Maori community, because of a concern that Maori children and youth had not been appropriately cared for within the structures of the earlier legislation.

103. The change in direction of the 1989 Act is signalled by the inclusion of "family" in the title (and a wide definition of family is used). This indicates that the interests of the child were henceforth not to be seen in isolation, but in the context of the child's family, whanau, hapu (sub-tribe) iwi (tribe) and family group. The strengths and resources of these groups are to be used to help resolve any difficulties arising with the child or young person. The main vehicle by which the Act facilitates the wider family's involvement in decision-making is the Family Group Conference (FGC). In 1992/93, 5,219 FGCs for care and protection purposes, and 6,559 for youth justice were held.

A. Parental guidance (art. 5)

104. The Guardianship Act 1968 provides for a child to have a guardian or guardians who have the right of control over the upbringing of the child. Guardianship is defined in the Act (sect. 3) as the custody of a child and the right of control over the upbringing of a child including all rights, powers, and duties in respect of the person. "Upbringing" of a child is defined to include education and religion, although the exact rights, powers and responsibilities attaching to guardianship are not set out in legislation.

105. The principles governing care and protection and youth justice in the Children, Young Persons and Their Families Act give effect to this article. In the care and protection principles, it is stated (sect. 13 (b)) that the primary role in caring for and protecting a child or young person lies with the child's or young person's family, whanau, hapu, iwi and family group and that these groups should therefore be supported, assisted and protected as much as possible. The provisions of the Act are consistent with those in article 5 of the Convention in upholding the importance of the family/whanau in guiding children and young people in the exercise of the rights recognized in the Convention. The Act states that State intervention into family life should be the minimum necessary to ensure a child's or young person's safety and protection. Similarly, the Act's youth justice principles include the notion that any measures for dealing with offending by children or young people should be designed to strengthen families (and other family groups) and

to foster their ability to develop their own means of dealing with offending by their children. The principle is also stated that any sanctions imposed on a young offender should take the form most likely to maintain and promote the development of the child or young person within his or her family, and should take the least restrictive form that is appropriate in the circumstances (sect. 208 (f)). Further information about the youth justice system is contained in section VIII.B, commencing at paragraph 340 of the report.

106. Awareness of the child's developmental stage is part of the care and protection assessment process. The legislation recognizes the different needs of children depending on their age. Interventions are to be appropriate to the child's own sense of time; and regular reviews are provided for (see sect. J commencing at para. 190 below).

107. The Crime Prevention Unit of the Department of the Prime Minister and Cabinet has, as one of the key goals of the national Crime Prevention Strategy, to improve the effectiveness of support for "at risk" families.

B. Parental responsibilities (art. 18, paras. 1-2)

108. The parents of a child are normally joint guardians by virtue of their parenthood. As noted in paragraph 104, guardianship confers custody and the right of control over the upbringing of a child. However, under the Guardianship Act 1968, the mother is the sole guardian if she is not married to the father and either never has been or ceased to be before the child's conception, or if she and the father were not living together as husband and wife at the time that the child was born. In this case the father of a child is not automatically a guardian, but he can apply under the Act to be appointed as a guardian.

109. In the absence of specific law governing surrogate motherhood, a surrogate mother is the legal mother of the child whether her own or donated ova were used. Where surrogacy arrangements have been used, the "social parents" can apply to adopt the child and acquire the legal status of parents, providing the surrogate mother gives her consent to the adoption. However, New Zealand clinics do not offer surrogacy and surrogacy is unlikely to take place unless there is ethical approval or a new statutory scheme. New Zealanders will only be involved with surrogacy through informal arrangements or when they travel to other jurisdictions. A father who claims to be the natural guardian of a child may seek a court declaration as to guardianship under the Act. As noted in the report under article 3, paragraph 45 above, the Act states that in any matter relating to the custody or guardianship of a child, the court shall regard the welfare of the child as the first and paramount consideration.

110. The Children, Young Persons and Their Families Act includes (as one of the means of achieving its general object to promote the well-being of children, young persons and their families) the aim of assisting parents, families, whanau, hapu, iwi and family groups to discharge their responsibilities to prevent their children and young persons suffering harm or other ill-treatment (sect. 4). The Children and Young Persons Service of the Department of Social Welfare works with families to protect children, manage young offenders, and try to ensure care and security for children in need.

The Service is contracted with the Minister of Social Welfare to provide care and protection and other social services (as well as Youth Justice Services and Adoption Services).

111. Youth Aid Services is responsible for assessing all cases involving children or young persons who have come to notice for offending, and making recommendations as to the outcome of the case. In most cases, Youth Aid Officers are able to divert the child or young person from the formal justice system. (More information on the diversion process is given in sect. VIII.B commencing at para. 353 of the report). In some cases, recommendations are put before a local Youth Justice Coordinator for a decision as to the next steps. In the event that the matter is referred to a Family Group Conference, the Youth Aid Officer ensures that police are either in attendance or are represented.

112. Programmes to support parents and families are also administered by a number of other government agencies. The Early Childhood Development Unit, for example, is a Crown agency from which the Minister of Education purchases specific outputs related to parent support projects, and to the Parents as First Teachers Programme (para. 121 below). For a description of the Early Childhood Development Unit see paragraph 118 below. One of the outcomes of parent support programmes is heightened parental self-esteem, and a greater awareness among parents of the need for their children to attend an early childhood education programme. Health and welfare issues are also addressed in the course of parental group meetings.

113. A range of parenting programmes and services are also addressed within the national school curriculum. It is the responsibility of schools to include in their curriculum delivery a focus on family studies, particularly as expressed in the essential learning areas of social sciences, and health and physical well-being.

114. In addition to its directly contracted services, the Department of Social Welfare supports through the New Zealand Community Funding Agency a wide range of non-governmental organizations, many of which work in the area of child and family support (for example, women's refuges, parenting programmes, church agencies and family/whanau resource development).

115. The Royal New Zealand Plunket Society is a major non-governmental organization providing postnatal and early childhood health and development services. In mid-1994, with support from the Government, it launched a national campaign to promote parenting skills. Such programmes are designed to help parents cope better with the stresses of child-rearing in an age when the traditional handing down of parenting skills from one generation to the next has been weakened, partly as a result of the greater mobility of families.

Early childhood care and education

116. In 1989, the "Before Five" education policy changed the pattern of regulation for early childhood care and education, placing the various services on a similar footing. All services are now required to have an approved charter in order to receive government funding through bulk grants.

All early childhood care and education centres are required to be licensed to operate and are subject to the Education (Early Childhood Centres) Regulations 1990, and home-based services are subject to the requirements of the Education (Home-based Care) Order 1992. Every early childhood centre is bound by a number of requirements. These are defined in the law as well as in specific agreements such as charters and licences.

117. The Education Review Office was established as a department of State in 1989 to investigate and report on education in New Zealand schools and early childhood centres. In keeping with this, and in order to raise the level and quality of both governmental and public information about New Zealand education, the Office publishes a wide variety of reports on the performances of schools and early childhood centres (see also para. 276 below). Since 1990 the Education Review Office has reviewed most early childhood services in New Zealand schools at least once and reported publicly on their performance. Reports on these services have been written for both the management and the responsible minister.

118. The Early Childhood Development Unit, established under the Education Act 1989, supports the early childhood education of children aged 0-5 years. Among the services it provides are advice and support for the establishment of early childhood education services, including Pacific Island language groups; promotional activities; and professional development for licensed and chartered early childhood services.

119. In 1993, it was estimated that 95 per cent of four-year-olds, 46 per cent of two-year-olds and 18 per cent of children under two years old were in early childhood care and education (ECCE). Of a total of 148,239 children in the ECCE centres in 1993, 28,503 were of Maori descent (19 per cent) and 8,800 (6 per cent) of Pacific Island descent. Although the participation in ECCE for Maori and Pacific Island children has increased, rates are still below those for pakeha children. The significant increase in the participation rate of Maori children from 0-5 years in early childhood programmes in the past 10 years is due to the development of kohanga reo (Maori language immersion early childhood programme, or "language nest"). The provision of an early childhood education programme linked inextricably with the survival of the Maori language has been the catalyst for increased participation.

120. The Early Childhood Development Unit has played a key role in establishing and developing Pacific Island language groups and other parenting programmes for Pacific Island families. There has been a marked increase in participation by these language groups, of which there are now over 200 throughout New Zealand (compared with only 14 in 1987).

121. The Parents as First Teachers Programme (PAFT) is a primary prevention programme administered and funded by the Ministry of Education, designed to promote a child's overall development in the first three years of life, and to support parents in this task. Twenty-four programmes are running in New Zealand, involving 3,000 families. This will increase to 6,000 families in 1996 and 9,000 in 1997. The scheme involves monthly home visits by Parent Educators, group meetings for parents and regular monitoring of the progress of the children involved. Parents are linked to Well-Child Care Health Providers for overall developmental checks and immunization. Participation in

PAFT is free, voluntary and non-targeted. Opportunities are offered at the birth of a child to all families who wish to participate, in those areas where the programme is available. The Early Childhood Development Unit has been contracted to establish the New Zealand PAFT National Centre to manage and coordinate the expansion of the Programme.

122. The Home Instruction Programme for Preschool Youngsters (HIPPY), is another primary prevention programme, and is part of a pilot of seven Family Service Centres throughout New Zealand currently being piloted in seven communities. HIPPY is a home-based two-year programme for the educational enrichment of four- and five-year-old children in disadvantaged communities, and for the promotion of increased awareness in parents of their own strength and potential as home educators. Trained workers, themselves care givers of young children from the communities served by the programme, visit care givers on the programme once a fortnight to role-play the use of instructional materials that are used when the care giver works with the child. In the alternate week, the care giver comes together with other care givers visited by that home tutor to discuss their children's progress and to take part in activities that provide enrichment for the mother. Each group of home tutors is trained, supervised and supported by a coordinator, who is an approved HIPPY licensee. Approximately 500 families are expected to participate in the pilot programme.

C. Separation from parents (art. 9)

123. The Children, Young Persons and Their Families Act contains the legislative basis for intervening in the lives of children and young people being removed from their parents for care and protection reasons, or because of offending. Parts II, III, IV and V set out the relevant provisions. In the care and protection area, many of the duties, functions and powers under the Act can be undertaken by both statutory agencies and approved organizations under the Act (that is, Child and Family Support Services, Iwi Social Services, and Cultural Social Services).

124. Most decisions relating to the child under the Children, Young Persons and Their Families Act are made by voluntary agreement (between the parents and those making decisions under the Act, with the child being involved and encouraged to participate in decisions and have his or her views taken into account wherever possible) or through a Family Group Conference. In both these situations the families are party to any decision that is made, in keeping with the overall family orientation of the Act. If a situation cannot be resolved through the FGC process and has to go to court, the family must be advised of the court hearing so that members can attend. The Act specifies that the court is not to make a declaration that a child is in need of care and protection unless it is satisfied that the child's or young person's needs in that respect cannot be met by other means.

125. In care and protection practice, a key issue is balancing the principle that a child should not be separated from his or her family if possible, and the principle that the welfare and interests of a child should be the first and paramount consideration. This requires good judgement. There has been some criticism that practice under the Act has not always given due weight to the interests of the child. Reviews of practice under the Act have not,

however, recommended changes to the present care and protection system, but have advocated better training and supervision of and practice by those working under the Act. Concentrated effort to these issues has been given by the New Zealand Children and Young Persons Service (of the Department of Social Welfare) in respect of its social workers working under the Act. The best interest principle is addressed in section III.B, commencing at paragraph 42, of the report.

126. Before making an order dissolving a marriage the court must, except in limited circumstances, be satisfied that suitable arrangements have been made for the custody, maintenance and other aspects of the welfare of every child to the marriage under the age of 16 (Family Proceedings Act). In addition the Court cannot make an order dissolving a marriage unless the parties have been living apart for the two years immediately preceding. Under the Guardianship Act 1968 agreements between parents as to matters of custody, upbringing and access are valid but will not be enforced by the court if it does not consider enforcement to be for the welfare of the child. In any proceedings under the Guardianship Act, the court must ascertain the wishes of the child, if the child is able to express them, and take them into account to such an extent that the court thinks fit, having regard to the age and maturity of the child. As noted in paragraph 55 above, the wishes of a child may be ascertained in a variety of ways such as through counsel for the child if appointed, specialist reports or by the judge interviewing the child.

The imprisonment of offender parents and contact with their children

127. Official policy on arrangements for female prison inmates with babies is set out in the Penal Institutions Regulations. There is no legislative prohibition on mother and child units in prisons. However, such units are not provided on the basis that a prison is not a suitable environment for a child.

128. The Criminal Justice Act 1985 and the Penal Institutions Act 1954 provide a number of statutory means by which an offender may be released to be with his or her child.

129. Social workers appointed to work in prisons have as one of their key tasks the support and assistance of inmates' families. Practice with regard to children visiting parents in prison varies from prison to prison. Most remanded inmates are allowed visits during the week whereas most sentenced inmates are allowed only weekend visits.

130. The Criminal Justice Amendment Act 1993 provides for the setting up of habilitation centres and the referral of released inmates to these as a form of parole. Proposals for the establishment of five such pilot centres have been called. Providers of those centres must ensure that offenders' relationships with their families/whanau are maintained and enhanced in a culturally appropriate manner, and offenders who are primary care givers of dependent children must be provided with the opportunity to maintain those relationships so as to ensure minimum family dislocation.

131. The New Zealand Prisoners Aid and Rehabilitation Society is a voluntary organization that provides support services to sentenced inmates and their families. Its major funder is the Department of Justice. Assistance to

families of inmates for the maintenance of family relationships is one of the services the Department purchases from the Society. In recognition of the International Year of the Family, the Society received funding to make a video highlighting the situation of families when a member is imprisoned.

Immigration decisions involving separation

132. For the purpose of removal proceedings, and also for appeals to the Removal Review Authority, a child is defined to be anyone who is unmarried under the age of 17 years as at the date a removal order is served. The majority of children in New Zealand unlawfully are the dependants of persons also in New Zealand unlawfully. In the normal course, and unless there are exceptional circumstances, children are not served with a removal order and they are almost always named as dependants in a removal order made in respect of their parents.

133. In cases where a child is believed to be in New Zealand unlawfully, no action is taken to serve a removal order on the child until a responsible adult has been nominated, in accordance with section 60 of the Immigration Act 1987, to represent the interests of the child.

134. A responsible adult (as referred to above) may appeal to the Removal Review Authority on behalf of a child not otherwise named as a dependent child in a removal order. There is however, nothing to stop a child named in the parents' removal order and included in the parents' appeal from including submissions in support of himself or herself in conjunction with the parents' appeal.

135. Dependent children who are over 17 years of age and who appeal a removal order, and whose parents are doing likewise, can choose either to exercise separate rights of appeal from their parents or to have their case considered as part of their parents' appeal.

136. In cases of appeal against removal where children are involved, the appeal authority consistently addresses the particular circumstances of the children (to the extent possible based on submissions in support). The New Zealand Immigration Service makes submissions to the appeal authority to ensure that appropriate emphasis is placed, inter alia, on the Convention on the Rights of the Child in such cases, following the Court of Appeal's interim judgement in Tavita v. Minister of Immigration [1994] 2 NZLR 257, where issues were canvassed relating to the Convention on the Rights of the Child in the context of an immigration case.

D. Family reunification (art. 10)

137. "Family reunion" is one of the five categories for which places have been allocated each year in the Refugee Quota Programme administered by the New Zealand Immigration Service. The number in this category, currently 225, has varied from year to year depending on circumstances and the priorities of the Immigration Service and the Office of the United Nations High Commissioner for Refugees. Further details on the situation of refugee children is provided in the report under section VIII.A, paragraph 330, with reference to article 22.

138. Under current immigration policy, the Family Category of permanent entry enables New Zealand citizens or residents to be joined in New Zealand by their spouses, partners, parents or dependent children. The Family Category provides an avenue through which immigrants who have already settled in New Zealand may sponsor the entry of other eligible members of their immediate family. Each application is considered on its own merits as expeditiously as circumstances permit.

139. New Zealand citizens have a completely unfettered right of return to New Zealand at all times. New Zealand residents who are not New Zealand passport holders can also re-enter New Zealand, provided they hold a valid Returning Residents Visa. There is generally no restriction on movement out of New Zealand by any person.

E. Recovery of maintenance for the child (art. 27, para. 4)

140. The Child Support Act 1991 affirms the right of children to be maintained by their parents. It also affirms the obligation of parents to maintain their children regardless of the parents' marital relationship or whether or not the parents are guardians of their children. The Act is administered through the Child Support Agency of the Inland Revenue Department. The person who has custody of a child can apply for child support from a liable parent by making an application to the Inland Revenue Department for a formula assessment for maintenance payable. Generally an application for formula assessment is compulsory where a custodian receives a benefit to support the child. The payment of child support is then enforced by that department. The Commissioner of Inland Revenue and the Family Court can depart from the formula assessment on application from either party but only on very strict criteria. There is also provision for the custodian and liable parent to enter into a voluntary child support agreement, which the Child Support Agency can administer if required by the parents. The Child Support Act is under review.

141. The Family Proceedings Act 1980 (Part VIII) provides for the registration and confirmation in New Zealand of maintenance orders made in Commonwealth and other designated countries and for dealing with maintenance applications from countries that are parties to the United Nations Convention for the Recovery Abroad of Maintenance 1956 (UNCRAM). The extent to which access to maintenance can be made available under UNCRAM is affected by the fact different countries have different countries have different age limits as to parents' liability to pay child maintenance. Parents are generally liable until the child is at least 16 years of age, and in some countries liability continues until the child has reached 20 years of age.

F. Children deprived of a family environment (art. 20)

142. In recognition of the importance of the role of parents and family, section 13 (b) (ii) of the Children, Young Persons and Their Families Act states, as noted earlier, that "Intervention into family life should be the minimum necessary to ensure a child's or young person's safety and protection".

143. It is sometimes claimed incorrectly that this amounts to a policy of minimum intervention. The Act is explicit that any intervention should be the minimum necessary to ensure a child's or young person's safety and protection. This difference is crucial and is intended to ensure that children and young people are protected from harm, that any intervention is not excessively disruptive and at the same time that account is taken of other principles in the Act relating to family involvement and the strengthening of family relationships wherever possible. Any conflict between these principles is resolved by the principle of the paramountcy of the best interests of the child or young person expressed in section 6 of the Act.

144. The Act offers a wide range of care options to meet best the needs of the child in this situation. Some arrangements are based on voluntary agreements with parents; others are ordered by the court. Some care institutions are State-run; others are run by approved voluntary sector organizations, which include iwi and cultural groups. Sometimes parents' guardianship rights are suspended and vested in the State; sometimes parents retain those rights, but the State holds them as well. Alternatively, guardianship may remain with the parents, while custody orders secure the child's or young person's safety and care (sects. 139, 140, 141, 142, 101, 110 of the Act refer). Sections 139-142 provide for voluntary care agreements by parents, and sections 101 and 110 relate to court orders. All care agreements - other than for the temporary care of children - are based on a plan developed with the family. All plans are reviewed. The Act sets out different requirements relating to what needs to be included in plans and the review of plans depending on whether the care arrangement is by way of voluntary agreement or by court order.

145. Temporary care agreements are agreements for the temporary care of children or young persons which are made on a voluntary basis and are limited to a period not exceeding 28 days with an extension for a further period of up to 28 days possible. They are intended to meet short-term, often unexpected situations where for some reason (such as hospitalization or illness of a parent), parents are unable to provide care. The Act does not specifically require a plan to be drawn up for these agreements, given they are short-term and usually required to meet very specific situations.

146. Extended care agreements cannot exceed six months in the case of a child under seven years, and in all other cases may not exceed 12 months. No extensions of the agreements are possible. A Family Group Conference has to be held and approve the making of such an agreement. The voluntary care of disabled children or young persons is provided for under sections 141 and 142 of the Act and a Family Group Conference is also required for the making of any such agreement.

147. The guiding principle for alternative care arrangements is stated in section 13 of the Act: "Where the child or young person cannot be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, the child or young person should live in a new family group, or (in the case of a young person) in an appropriate family-like setting, in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained." The person in whose care the child is placed should, the Act

states, be someone who is a member of his or her hapu or iwi, or have the same tribal, racial, ethnic, or cultural background as the child; and be a person who lives in the same locality.

148. The Department of Social Welfare administers four residences, each of which has both open and secure facilities (providing a total of 92 places). It also has one residence which operates secure facilities only (with six places). In addition, the Department operates more than 80 Family Homes with bed capacity ranging from two to eight children, making a total national capacity of approximately 320 beds, on the basis of each child occupying a separate bed.

149. In addition, the New Zealand Community Funding Agency funds 106 Child and Family Support Services approved under section 396 of the Children, Young Persons and Their Families Act to provide residential care as well as other care and protection services. The approximate national residential capacity of these services is 400 places, with short-term residential care services adding approximately 500 additional places.

150. There have been incidents of young people absconding from Department of Social Welfare residences which have led to criticisms about the management of some residences. A strategic plan for residential services is to be developed by the Department of Social Welfare. Also, a redrafting of the Residential Care Regulations is under way and is expected to be before the Government later in 1995.

151. Each of the residential services provided for children and young people described above provides a programme for their residents, and in the case of services that target a particular client group (such as young people who use or abuse substances) they also provide treatment. There is some shortage of trained specialists (psychiatric and psychological) capable of dealing with children and young people specifically; nor are there at present any residential services specifically for young people with psychiatric illnesses, except at the Starship Children's Hospital in Auckland, and Burwood Hospital, Christchurch.

152. In addition to the provisions of the Children, Young Person and Their Families Act, the Guardianship Act provides that the High Court may make a child a ward of court and may appoint any person to be the agent of the court in that regard either generally or for a particular purpose. Wardship is used to provide the child with protection in special circumstances, for example where there is a need to restrain or sanction medical intervention or provide protection against strangers. It has also been resorted to where there have been difficulties over court-ordered access. The court becomes the child's guardian and, therefore, has the right to control his or her upbringing. Wards of court do not automatically leave their family, nor are they necessarily placed in an institution. The natural parents are not automatically deprived of the rights of guardianship when wardship is ordered, but their powers become subject to the power of the court. The child ceases to be under the guardianship of the court when he or she marries or turns 20, whichever is sooner.

153. Similarly, an application can be made to the Family Court to have a child placed under its guardianship (sect. 9 A of the Guardianship Act 1958). An application for such an order can only be made in the course of proceedings relating to custody and access. An order for appointing the Family Court a guardian can only be made where the court is satisfied there is no other practicable means for protecting the child's welfare.

G. Adoption (art. 21)

154. Adoption in New Zealand is governed by the Adoption Act 1955, administered by the Department of Justice. The Department of Social Welfare also has certain statutory functions.

155. Adoption is brought into effect by court order, so each case is ultimately controlled by the court whether the adoption is arranged through the Department of Social Welfare or privately. The Adoption Act requires that before making any order for the adoption of a child, the court is satisfied that three conditions are fulfilled. The court must be satisfied that the applicant is a suitable person to have custody of the child (the Adoption Regulations 1959 require applicants to complete a prescribed form and provide an affidavit to the court and a social worker must check with the police for anything known about an applicant's character); that the adoption promotes the welfare and interests of the child (due consideration being given to the wishes of the child having regard to his or her age and understanding); and that any conditions laid down by the child's parents regarding religious denomination are complied with. There is a statutory requirement for a report from a social worker.

156. Since 1992 the provision of domestic (and inter-country) adoption services has been carried out by the Adoption Information and Services Unit of the Children and Young Persons Service of the Department of Social Welfare. Social Workers in this unit are dedicated to adoption work and the Unit has, since its inception, placed priority on improving services to adoptive applicants.

157. The present process for people wishing to adopt involves completion of an application form giving basic details about the applicants, supplying references from two referees, obtaining medical information from the applicants' general practitioner, and a police check. If no particular concerns arise from these the adoptive applicants are invited to participate in an education and preparation programme. The aim of the programme is to provide applicants with information and to offer ongoing support. The programme consists of an information evening and two one-day seminars. The programme provides applicants with an opportunity, within groups and individual interviews, to explore issues surrounding adoption, to consider their own circumstances, and provides time to examine attitudes and beliefs about adoption. Applicants are requested to prepare a profile giving details about themselves, which is subsequently presented to birth parents considering placing a child for adoption to help them select the couple or person they consider will be most appropriate for their child. For the year from 1 July 1993 to 30 June 1994 a total of 683 final adoption orders were made.

158. Before an adoption order can be made by the court a number of consents must be filed in court. The consent of both parents is required if the parents are married at the time of conception of the child or subsequently marry. Otherwise the mother's consent is required and the unmarried father's consent is required if he is a guardian or if the court thinks it is expedient for his consent to be required. There are specific grounds on which the court may dispense with the requirement of consent (sect. 8).

Inter-country adoption

159. Inter-country adoption may occur by the child being adopted overseas in the child's country of origin (according to the adoption law of that country) or by being adopted in New Zealand under New Zealand's adoption legislation. The Adoption Act (sect. 17) provides for the recognition of an overseas adoption, subject to a number of conditions. These include the condition that the adoption be legally valid in the country where it take place, and that the adoptive parents acquire, under the laws of the country of adoption, a right to the custody of the child superior to that of any natural parent. As noted under paragraph 72 relating to article 7, where one adopting parent is a New Zealand citizen otherwise than by descent, the adopted child may be deemed to be a citizen by descent, which gives the child all the rights attaching to that status including automatic right of entry into New Zealand. An amendment to the Citizenship Act in 1992 restricted the passing of citizenship by descent, upon a recognized overseas adoption, to children under the age of 14 years. This was done to limit the abuse of the provision for immigration purposes.

160. A second means whereby New Zealanders can adopt children from other countries is where immigration clearance is obtained for a child who is brought to New Zealand, and once the child is in New Zealand an adoption order is obtained under the Adoption Act. (Laws, policies and practices of the Government relating to immigration, or which distinguish between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens and other non-nationals, are exempted from the Human Rights Act 1993). In the period 1 January 1993 to December 1994 there were 56 children from overseas for whom final adoption orders were made under the Adoption Act in New Zealand.

161. Where a New Zealand child is being adopted to live overseas, the safeguards of the Adoption Act of course apply in all cases where the receiving country requires adoption in New Zealand prior to the overseas adoption. The Department of Social Welfare does not keep statistics on the number of children leaving New Zealand for adoption overseas but it is estimated that 3-4 children may leave New Zealand each year after a final adoption order is made in New Zealand.

162. It is an offence under the Adoption Act (sect. 27) to give or receive payment in consideration of any adoption. Penalties of up to three months' imprisonment or a fine of up to $100, or both, are provided for. If the court is satisfied that such an offence has been committed, it may remove the child to a place of safety until he or she can be returned to the parents or guardian, or until other suitable arrangements can be made. An additional safeguard against payments for adoptions is contained in the Adoption

Regulations 1959, which require the applicants to file an affidavit in the court stating that there is no payment or reward involved in the proposed adoption.

163. Under the Crimes Act 1961 it is an offence to abduct a child from his or her parents or guardians, or knowingly to receive a child who has been abducted. The offence covers any situation of abduction, including abduction for the purpose of inter-country adoption.

164. The New Zealand Government has recently agreed, in principle, to New Zealand's accession to the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption. Officials are currently attending to the necessary legislative amendments and administrative structures required to enable New Zealand to accede to the Convention. Further information on changes to New Zealand law in the area of inter-country adoption will be provided in its next report.

H. Illicit transfer and non-return (art. 11)

165. The Guardianship Amendment Act 1991 implements New Zealand's commitments under the Hague Convention on Civil Aspects of International Child Abduction. The Secretary of Justice is designated as the Central Authority for the purposes of the Convention. Applications are made to the Authority, who must take certain actions to secure the return of abducted children.

166. The Act provides for the return to New Zealand of children who are unlawfully removed from New Zealand to another State which is a party to the Convention. There is also provision for a warrant to be issued to prevent the removal of a child from New Zealand with the intent to defeat another person's claim or right to custody or access. When a child has been removed from New Zaland, if the Authority is satisfied that the requirements of the Act are met, the Secretary of Justice must take action on the applicant's behalf with the overseas Central Authority.

167. The New Zealand Police and Customs have arranged for the names of children subject to court orders preventing their removal from New Zealand to be placed on the Customs Department's computerized passenger processing system at New Zealand's three international airports. Children subject to an application for return to another Hague Convention country can also be named on the system and stopped from leaving the country when they present their passport. In the short time in which the Convention has been in force in New Zealand, 74 applications have been made for the return of children to or from New Zealand, and for assistance in making arrangements to secure access rights.

168. Also relevant to the provisions of article 11 is the offence under the Crimes Act 1961 of unlawfully detaining or carrying off any person without his or her consent (or with consent obtained by fraud or duress), with intent to cause the person to be sent or taken out of New Zealand. Offenders may be liable for up to 14 years' imprisonment. Where a child has been kidnapped or is held overseas, the police make use of the Interpol network and other international police liaison avenues to ensure that attempts are made overseas to find out where the child is, what conditions or circumstances the child is

living in, and also to ensure that appropriate legal action is taken to have these circumstances reviewed by a competent authority, if necessary.

I. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

169. In relation to these subjects reference may also be had to other sections of this report, in particular to those sections on article 6 (the right to life, survival and development, para. 50), article 18 (parental responsibilities, para. 108) and article 20 (children without families, para. 142).

170. Child abuse is a problem causing increasing concern at all levels of New Zealand society. In the year to June 1993, the New Zealand Children and Young Persons Service received 12,409 reports alleging child abuse and neglect. Not all of these reports, upon investigation, were confirmed as instances of abuse or neglect. In some cases, while there may be suspicions about the adequacy of the care being provided for the child (or about the child's treatment), these are not able to be substantiated. The kind of action taken (or not taken) depends on the nature of the allegations made and the circumstances of the particular case (see next section for the principles and operational framework for care and protection under the Children, Young Persons and Their Families Act 1989).

171. The main focus of this section is the Children, Young Persons and Their Families Act 1989. In addition to the provisions of that Act, however, there are provisions in the Crimes Act 1961 (see under sect. III, paras. 51 and 52 above) aimed at protecting children from abuse and neglect, and the Domestic Protection Act 1982 gives some protection for children.

172. A Domestic Violence Bill was introduced into Parliament on 1 December 1994. The Bill will repeal the present Domestic Protection Act 1982 and is expected to come into force on 1 November 1995. The Bill aims to provide greater protection to the victims of domestic violence than is available under the current domestic violence legislation. The definition of violence in the Bill includes physical, sexual and psychological abuse. Most relevant in this context, the Bill specifically extends protection under the domestic protection system to children and young persons, by providing a procedure for applications for protection orders to be made on their behalf. Additionally, any applicant may request counselling for the applicant and for a child of the applicant. Another power granted to the court is to make interim custody and access orders or to vary existing orders to protect the welfare of the child. In custody and access cases where violence is alleged, the onus is on the violent party to satisfy the court that the child will be safe before custody or unsupervised access is granted.

173. Under the Guardianship Act 1968 the court may deprive a parent of the guardianship of his or her child if it is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian.

Children, Young Persons and Their Families Act 1989

174. Parts II and III of the Act establish the principles and an operational framework for a care and protection system to meet the objectives of the articles under discussion. Section 4 of the Act includes the object of promoting the well-being of children and their families by assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect or deprivation; and by providing for their protection from such mistreatment.

175. The principles governing the care and protection system are contained in section 13 of the Act, starting with the basic principle that children and young persons must be protected from harm, their rights upheld, and their welfare promoted.

176. A detailed definition of the circumstances in which a child or young person is in need of care and protection is given in section 14 of the Act. They include but are not limited to situations where the child or young person is being, or is likely to be, harmed (physically, emotionally or sexually), ill-treated, abused or seriously deprived; where the child's or young person's development or physical, mental or emotional well-being is being or is likely to be seriously and avoidably impaired or neglected; where such serious differences exist between the child or young person and the parents or guardians that the child or young person's well-being is threatened; or where the child or young person is behaving or has behaved in a way which threatens his or her own safety; or where the parents or guardians are unable or unwilling to control the child or young person.

177. The principles governing care and protection are given operational effect in Parts II, III, IV (other than sects. 351-360), VII and VIII of the Act. In cases of child abuse, for example, members of the public are able to report concerns abut child abuse without fear of legal action being taken against them for doing so. Police and social workers are required to investigate such reports. Necessary actions in response to reports are authorized, along with a range of emergency measures through which children can be seen, medically examined and removed from the domestic situation.

178. The New Zealand Children and Young Persons Service of the Department of Social Welfare is the primary statutory agency administering the care and protection system established under the Children, Young Persons and Their Families Act. The police, responsible for the enforcement of the general criminal law, are also closely involved. Reports of child abuse received by the Service must be investigated within a maximum of 24 hours. (In the larger urban areas, police stations may have specialist child abuse investigations units, or other units dedicated to dealing with family violence, while in smaller stations a Criminal Investigation Branch member is assigned to these duties. Police staff involved in child abuse investigations work closely with the Children and Young Persons Service.) Applications can be made to the court for a "place of safety warrant" (sect. 39) or a warrant to remove a child or young person (sect. 40). Any District Court judge or, when a District Court judge is not available, any Justice of the Peace or Registrar can issue such warrants.

179. A "place of safety warrant" may be issued where the person issuing the warrant is satisfied that there are reasonable grounds for suspecting that the child or young person is suffering, or is likely to suffer, ill-treatment, neglect, deprivation, abuse or harm. In relation to a "warrant to remove a child or young person", there needs to be reasonable grounds for believing that the child or young person is suffering, or is likely to suffer, ill-treatment, serious neglect, abuse, serious deprivation, or serious harm, or is so seriously disturbed as to be likely to harm him or herself or other persons or to cause serious damage to property.

180. Upon execution of a warrant, the child or young person is deemed to be in the custody of the Director-General of Social Welfare. There are safeguards in the Act relating to the exercise of the powers under the warrants. After their removal, the child or young person must be brought before the court within five days unless he or she has been released or the court has made an order placing the child or young person in the custody of some person pending the determination of proceedings which have begun before the court.

181. Once a social worker or police officer has decided that a child is in need of care and protection, he or she must notify a Care and Protection Coordinator in the Service, who must in turn convene a Family Group Conference involving all those who may have an interest in the child's welfare.

182. The Family Group Conference (FGC) is the mechanism established under the Act to facilitate a resolution to problems of child care and protection (and youth justice issues). At the Conference, families/whanau with input (by way or information and professional advice) from those involved or able to assist with the particular situation (e.g. the staff of the Department of Social Welfare or other agencies, or the police) make an agreed plan for solving the problem. The Coordinator, a key figure in the system, may oversee and review the implementation of the plan. Where parties to an FGC are in agreement on a plan, then, subject to certain criteria (the plan not being clearly impracticable or inconsistent with the principles of the Act), the Department of Social Welfare is obliged to give effect to the plan. The Department's ability to veto plans where it has not been a party to the FGC is restricted to the provisos mentioned above. Where agreement on a plan cannot be reached, the Coordinator may reconvene the FGC in order to try to reach agreement, or report the matter to the person or body who made the referral for the Conference (usually a social worker or a member of the police), who may then take such action under the Act as he or she considers appropriate. This may include taking no further action or taking the matter to court.

183. The FGC is the means by which New Zealand is attempting to overcome the difficulty of involving families in the effective care of their children when problems have already developed. It has the important added advantage of recognizing Maori processes (being compatible with a model of Maori whanau decision-making) and those of other cultural groups.

184. There has been criticism of the level of resources provided for services for the support and assistance of children and families in resolving care and protection concerns, including that given to non-governmental organizations providing services for children and young people under the Children, Young Persons and Their Families Act. Areas of particular concern are specialist

services for young people, and the perceived lack of progress in establishing culturally specific social services. A concerted effort is being made within the Department of Social Welfare to approve Iwi and Cultural Social Services as provided by the Children, Young Persons and Their Families Act. The overall allocation of funding for non-governmental service providers shows an increase in 1995 over the level provided in 1994. A services planning process is used to identify and prioritize the level of service and funding needed at the local community level.

185. The Children and Young Persons Service has recently been reviewed with a view to improving its performance. The review identified a number of areas within the Service where resources could be shifted to front-line service delivery and it is expected this will result in an increase of 60-70 social workers to front-line delivery of services under the Act. The Service at present has just over 1,300 social work staff.

186. Policies which specifically target family violence are being promulgated within the police. It is now recognized that specific intervention is required to bring instances of family violence to notice, as a means of preventing it from escalating and to give victims the opportunity to gain a measure of control over their situation. The fact that children are inevitably caught up in the cycle of violence is another factor in the move to a more interventionist approach, not only by police but also by social workers and counsellors.

Corporal punishment

187. Corporal punishment of children and young people within government institutions is prohibited. It is not permissible to use physical punishment in the form of discipline on children or young people within institutions under the jurisdiction of the Department of Social Welfare or the Ministry of Education.

188. An amendment to the Crimes Act 1961 in 1990 outlawed the use of force to discipline children in early childhood centres or registered schools. Parents are legally justified in using force by way of correction towards a child provided the force used is reasonable in the circumstances. However, the use of unreasonable force against a child is a criminal offence and extensive measures are in place for the protection of children from abuse and maltreatment.

189. The Commissioner for Children has promoted the idea of alternatives to physical punishment for disciplining children and has advocated the repeal of section 59 of the Crimes Act. Also, as part of its activities in focusing on family relationships, the Committee for the International Year of the Family ran a campaign for a "Smack-free Week" to show parents how to be effective in disciplining their children without having to resort to physical punishment.

J. Periodic review of placement (art. 25)

190. The Children, Young Persons and Their Families Act provides for regular review of cases where children and young persons are subject to certain orders of the court. A date for review of the plan on which these orders are based

must be fixed at the time of making the order. When an order is made in respect of a child under the age of seven years, the review must be made no more than six months later; and in any other case, no more than 12 months from the making of the order.

191. Decisions, recommendations and plans made by Family Group Conferences must also be reviewed. Such reviews can be requested either by the Care and Protection Coordinator, or by two of the FGC members, and take the form of another FGC.

192. Within the New Zealand Children and Young Persons Service, which is the primary statutory care and protection agency, specific performance expectations are in place to ensure that the reviews of plans relating to court orders and arising from Family Group Conferences do occur within the required time frames.

193. All other arrangements made by the State for a child's or young person's care are time limited. Children removed under emergency warrant provision must be brought before the court on or before the fifth day, unless they are returned home earlier. When they are returned home, an explanation for both the initial removal and the return must be provided to the Commissioner for Children. Temporary Care Agreements (sect. 139) can be in force for only 28 days and may be renewed only once. Extended Care Agreements (sect. 140), requiring the agreement of a FGC, cannot last more than 12 months and cannot be renewed.

VI. BASIC HEALTH AND WELFARE

A. Survival and development (art. 6, para. 2)

194. A wide range of health services is available for babies, children and young people under the New Zealand health and disability system, with the aim of ensuring their survival and healthy development. Services are provided in the prenatal and postnatal stages of a child's life, as well as at birth, including services such as immunization, routine health checks and specialized paediatrics. The principle legislation in this context is the Health and Disability Services Act 1993. More detail on these services is provided below, under section C at paragraphs 209-223 covering health and health services.

195. Reference may also be made to paragraph 50 above, where the general principle of the child's right to life, survival and development is discussed. Other relevant sections are paragraphs 169-173 on protection from abuse and neglect, and paragraphs 266-272 concerning the measures taken to ensure an adequate standard of living.

196. The delivery of Government-funded health services has recently been reorganized in New Zealand and the responsibility for purchasing personal health and disability support services has been placed in the hands of four Regional Health Authorities (RHAs). The coordinating and purchasing of public health programmes, which was the responsibility of a national health agency, the Public Health Commission, will also be undertaken by the RHAs from 1 July 1995. These agencies are funded and monitored by the Ministry of

Health, which is the Government's chief policy adviser on health. The National Core Services Advisory Committee, appointed by the Minister of Health under the Health and Disability Services Act 1993, provides independent policy advice to the Government on kinds and priorities of personal health and disability support services. From 1 July 1995 this policy advice will include public health matters which prior to this date were the responsibility of the Public Health Commission.

197. Guidance for purchasers is provided through annual policy guidelines which specify the Government's objectives and priorities for health and disability support services. Included in the guidelines are principles for purchase decisions, the health gain priority areas, and the service obligations which describe the services to be purchased. These guidelines provide a basis for the funding agreement between the Minister and each Regional Health Authority. Consumers' rights have been provided for in the Health and Disability Consumer Act 1994. A draft Code of Rights for Consumers of Health and Disability Services has recently been published for public consultation.

B. Children with disabilities (art. 23)

198. The services provided to support children and young people with disabilities are based on policies which aim to enhance their development and maximize their potential. Policies recognize that children who have a disability are likely to require additional support to achieve their potential and participate fully with their peers. It is also recognized that support may be required by other members of the family, who play a crucial role in the child's care and development.

199. Under the Children, Young Persons and Their Families Act 1989, if care for a child or young person with a disability is to be provided outside the family situation, such care has to be provided by an organization approved under the Act and be by way of a formal care agreement between the parents or guardians and the approved organization. A Family Group Conference has to agree to the care agreement being entered into. A number of other conditions also apply to such agreements which need to be periodically reviewed by the Family Group Conference. Recent amendments to the Act now require that organizations have to be specifically approved to provide care for severely disabled children and young persons and that suitable persons or organizations authorized by the Director-General of Health need to certify that the proposed care giver has appropriate facilities and adequate staffing to care for the child or young person. The objective is to ensure that children and young persons with disabilities are not inappropriately placed away from family and that their needs are subject to periodic review.

200. The range of disability support services which are currently available includes: personal support with daily activities; speech, physio and occupational therapy; specialized equipment; adaptations to the home environment; and financial assistance to meet the additional costs incurred by the family in caring for a child with disabilities. The support services required by each child or young person and their family are determined by a comprehensive assessment of their needs.

201. Learners with a disability, learning difficulty, or behavioural difficulty may receive special Government-funded education when they have been reliably identified as needing alternative or additional resources to those usually provided in regular education settings. The primary government agency involved, the Special Education Service, assists in the provision of a range of services including provision of extra assistance, adapted programmes or learning environments, and specialized equipment or materials to support identified learners in special or regular education settings.

202. Children and young people with disabilities may be educated in special schools, special classes, or in "the mainstream" with their peers. A very small number attend residential schools. Children and young people with disabilities are able to attend the school of their choice. However, where there are problems with access to buildings and/or the level of support available, they may be required to attend another school.

203. The Human Rights Act 1993 (sect. 21 (h)) outlaws discrimination of grounds of disability in a wide range of areas. (Detail on the Human Rights Act has been provided earlier in the report or is available in the core document and in New Zealand's third periodic report under the International Covenant on Civil and Political Rights.) Although the Act makes certain exceptions in relation to disability in some of its provisions against discrimination, a provision that other enactments in force are not affected (sect. 151) means that the Education Act overrides these with the effect that there is free access to State schools without exception (sects. 3 and 8 Education Act).

204. The Building Act 1991, amended in 1993, takes account of the needs of people with disabilities by setting out provisions for access to public buildings and the facilities required.

205. As part of the social security system, a non-taxable "handicapped child" allowance is payable to the parents of "a seriously physically or mentally handicapped child" who needs constant care for at least 12 months and is being cared for at home. There were 11,087 children receiving such an allowance as at 30 June 1994 with 2,083 applications granted in the year to that date. In addition, subsidies are paid through Regional Health Authorities to organizations providing services for home-based care and residential care for people with disabilities. Regional Health Authorities are also responsible for the registration of homes for people with disabilities. The New Zealand Community Funding Agency has responsibility for paying subsidies for vocational rehabilitation for people (including children) with disabilities. The work of the Agency is described in more detail at paragraphs 263-265 below.

206. In the past, a range of government agencies were responsible for funding services for people with disabilities. To improve coordinated provision of disability support services, and help ensure that these services meet the needs of people with disabilities, the Government initiated the health and disability reforms from 1 July 1993 under the Health and Disability Services Act 1993. The range of support services includes personal care, care-giver support, equipment and aids, renovations to homes, community residential services (although this service is being phased out in favour of foster care),

rehabilitation services, needs assessment and service coordination, and information services. Government has decided that disability support services for children are to be free. As part of the "funder/provider split", as discussed in paragraph 196, four Regional Health Authorities (RHAs) are now responsible for purchasing most of the disability support services that were funded by a variety of State agencies in the past. The majority of disability support services funding will have been transferred to the RHAs by 1 July 1995. The RHAs will be responsible for purchasing the majority of disability support services for the people in their regions. The Government expects RHAs to purchase a range of disability support services to ensure that a range of options are available to consumers and that they receive the best possible services appropriate to their needs. The Government has identified a number of goals for the services which support people with disabilities. The overall aim is to enhance the quality of life and provide a more flexible way of delivering disability support services.

207. One aspect of the development of services for people with disabilities is the process known as deinstitutionalization. This is a process of providing people with disabilities (usually intellectual or psychiatric disabilities, but also physical or sensory disabilities) the opportunity to live in an environment with patterns and conditions of everyday life which are as close as possible to the norms and patterns of mainstream life. The Government requires RHAs, through their funding agreements, to provide detailed service development and financial plans where deinstitutionalization of any institutional (hospital-based) services is intended. Before proceeding with a deinstitutionalization plan, RHAs must obtain the approval of the Minister of Health. An important outcome of deinstitutionalization is the re-establishment of family relationships which may have lapsed while the child has been living in an institution. Apart from admission for some short-term rehabilitation services, children are no longer placed in long-term institutional care.

208. Staff of the Ministry of Health attend, where appropriate, conventions and meetings locally and overseas relating to disability support issues.

C. Health and health services (art. 24)

Infant and child mortality

209. The two major causes of death influencing New Zealand's infant (under one year) and child mortality rates are Sudden Infant Death Syndrome (SIDS) and unintentional injury due to motor vehicle crashes. New Zealand's infant death rate declined by 38 per cent between 1980 and 1990 but, with a rate of 7.3 per 1,000 in 1992, remained relatively high amongst OECD countries. SIDS, which accounts for 28 per cent of non-Maori and 46.5 per cent of Maori infant deaths, contributes significantly to this high rate. There are encouraging signs that programmes such as the National Cot Death Campaign of 1991, which alerted parents to three risk factors, can contribute to a reduced rate of SIDS. For example, the rate of Maori infant death due to SIDS decreased in 1992 by 33 per cent to 6.1 per 1,000 (from 9.2 per 1,000 in 1989). This rate is a slower decline, however, than that amongst the non-Maori population. There is also a disparity in relation to the total infant mortality rate. The

infant mortality rate for the population overall per 1,000 declined from 9.9 in 1990 to 8.3 in 1991. The Maori infant mortality rate remains higher than this at 13.7. SIDS prevention programmes, specifically targeted for Maori and designed to help reduce the SIDS risk rate, are included in current well child health promotion services.

210. The Pool Fencing Act was adopted in 1987, requiring all owners of home pools to fence them adequately. This arose from statistics in the early 1980s when 53 preschool children drowned in backyard pools in a four-year period, While the Act has been controversial and difficult to enforce, public knowledge of the issue has resulted in a substantial drop in preschool drownings in home pools to only six in 1991-1993.

211. Almost a third of deaths among 5-14 year olds are due to motor vehicle crashes. As part of overall health promotion, the Public Health Commission has been obliged to provide services which promote the prevention of unintentional injury. Traffic laws and driving standards are enforced by the police. These govern the licensing of drivers, inspection of motor vehicles, speed limits, and alcohol blood limits. Children under eight years of age must use a child restraint when travelling and if one is not available, they must wear a seat belt. Children under two years of age are required to be placed in a car restraint; in April 1995 this requirement was extended to children aged under five years. Car restraints are available for hire from the Plunket Society, a non-government agency working with infants, young children and their families. Since the start of 1994, it is compulsory for cyclists to wear safety helmets. Road safety is administered by the police and the Land Transport Safety Authority, who carry out publicity through the media and by means of posters and other advertising. School programmes for road safety emphasizes the integration of traffic education into broader education.

212. Motor vehicle crashes caused 41.1 per cent of the deaths amongst young people aged 15-24 years in 1992 with the male death rate from this cause (64.9 per 100,000) being almost three times higher than the female rate (21.3 per 100,000). Young people in this age group are more likely to die as a result of a motor vehicle crash than any other age group in New Zealand.

213. Suicide is the second most common cause of death after motor vehicle crashes amongst young people aged 15-18 years. This high rate of youth suicide has been of great public concern over the past few years. Figures released by the World Health Organization in relation to young people aged between 15 and 24 show that in 1990 New Zealand had the third highest rate (38 per 100,000) of male youth suicide amongst the 23 OECD countries. New Zealand also has the highest rate of female youth suicide (6.7 per 100,000) in the OECD.

214. In response to the high rate of youth suicide in New Zealand, the Government initiated the Youth Mental Health and Suicide Prevention Project. A steering group was established to identify ways in which government agencies could work to reduce the rates of suicides. In 1994 the report of the steering group was released. The report makes recommendations to government agencies whose policies and programmes were seen to impact on the mental

health of young people. Progress with the implementation of these recommendations is monitored by a monitoring group of officials convened by the Ministry of Youth Affairs.

Medical assistance and health care, especially primary care

215. The Government is committed to providing comprehensive, publicly funded child and family health services. A number of small and large agencies provide health and disability support services and programmes in a variety of settings. Most primary health services provided for children are free, including immunization, dental care and the majority of "well child care services" (see below). General primary medical care is undertaken largely by independent practitioners who charge a fee for service, with a State subsidy of 50 per cent or more of the fee being provided, with the actual amount of the subsidy depending on the age of the child, or the family income. Publicly funded secondary care services for children are also provided free of charge.

216. In terms of the Health and Disability Services Act 1993, New Zealand's RHAs are responsible for the purchase of publicly funded personal health and disability support services for the people within their regions. This includes both primary services, such as doctors' visits and laboratory tests, and secondary care services such as hospital care and surgery. The core package of well child care/tamariki ora services for children and their families is provided by RHAs free of charge with the aim of encouraging healthy development of children. The package includes:

(a) "Well child" checks for children aged 0-4 years, including developmental, vision and hearing screening, and parenting support;

(b) School health services including new entrant health assessment, hearing screening, fourth form vision screening (i.e. at about age 14), and health promotion;

(c) Immunization services as specified in the national immunization schedule;

(d) Surveillance and support services for "at risk" families and adolescents at risk of abuse or neglect;

(e) Free dental services for preschool and schoolchildren and adolescents;

(f) Specialist paediatric services.

217. The Act also requires RHAs to ensure that health services take account of cultural differences, particularly those of Maori and Pacific Island people. The aim of this is to ensure that services are not discriminatory and that there are no cultural barriers that would adversely affect access to and use of the services. A number of health initiatives designed by Maori specifically for Maori have developed over the past few years to improve Maori access to health services. Examples include marae-based clinics and other community-based whanau health programmes.

218. Health services are designed in accordance with quality requirements that meet the needs of specific population groups, for example children and young people. In addition to the general quality strategies included in the RHA policy guidelines, the "Principles of Health Care for Children and Young People", developed by a non-government organization, the Children in Hospital Liaison Group, are included in many child health service contracts. These Principles describe how services might accommodate the needs of children and families with specific references to a child's right to express an opinion, his or her right to confidentiality, and, in the event of a conflict of interest, the paramountcy of the child's interests.

219. Residential health camps for children are established and operated under the Children's Health Camps Act 1972. The camps provide short-term care in a safe, stimulating, residential environment for children with specific physical, emotional and social needs. School and camp programmes are designed to provide new experiences, enhance children's life skills, teach them to take responsibility for their own behaviour, understand and manage their own health conditions and learn new ways of coping with social and person challenges. Education about basic nutrition and health hygiene are components of the core camp programme.

220. In the area of mental health, improving services for young people was identified as a priority in the document "Looking Forward: Strategic Directions for the Mental Health Services", released in mid-1994. It was noted that there are very few specialist mental health services aimed specifically at young people. The strategy document states: "A youth service will be developed as part of a comprehensive mental health service. It will be based on regional community based mental health teams; it will make use of day-based services for back-up; and it will have access to regional in-patient beds in a specialized unit as part of the general hospital. Services will be targeted towards both Maori and non-Maori youth." Funding has been provided in the 1994/95 financial year to RHAs to develop services in keeping with the priorities outlined in the Strategy.

221. A common health problem among New Zealand children is glue ear (persistent otitis media with effusion) which causes hearing loss and can adversely affect a child's development. RHAs have been asked to set targets for reducing waiting times for specialist treatment.

222. There are some areas of the country where the health services currently provided for children could be improved to ensure that the needs of children and their families are better met. All RHAs are examining ways in which they can improve their services to ensure that all children receive basic health care. For example a Healthy Themes Programme being developed in South Auckland is designed to offer the 10 per cent most at risk families an opportunity to improve their coping skills. The programme aims to increase parents' and care givers' knowledge of the stages of child development, facilitate access to community resources and encourage attendance at well child clinics. The programme is based on home visits beginning at birth and is available until the child reaches five years of age.

223. An example of an intersectorial initiative is the pilot family service centre which is being established in six locations to provide integrated

health, education and welfare services to disadvantaged families with children under five who might be otherwise unlikely to receive services. RHAs are required to ensure that appropriate well child (tamariki ora services), public health nursing and family planning services are provided through these centres.

Combating disease and malnutrition

224. The aim of the Public Health Commission (PHC) was to improve people's health, minimize the risk of disease and reduce the need for hospital and health services. Public health programmes are targeted at whole populations or population groups such as children, rather than individuals or families, but are designed so that everyone can benefit.

225. The PHC's areas of responsibility have been wide. They include environmental health (such as water quality); nutrition and food; the prevention and control of communicable disease; major lifestyle and public health problems (such as smoking, cancer and road traffic injuries); as well as the public health needs of special groups including Maori, Pacific Islanders, children, young people and older people.

226. The PHC consulted widely with the health sector, government and non-government organizations, individuals and agencies with an interest in public health and the community, including Maori.

227. Government has developed a National Immunization Strategy to improve immunization in New Zealand. The Strategy will involve parents/care givers, health professionals and the education sector. The National Immunization Strategy has five strands: a simplified immunization schedule; an immunization certificate for checking childhood immunization status at entry to early childhood centres/schools; standards for immunization providers; local immunization coordination and improved immunization surveillance.

Pre- and postnatal health care for mothers

228. The Hospitals Amendment Act 1993 provides for obstetrics regulations, and a framework for maternity hospitals, wards and services, to ensure a safe environment and adequate care for mothers and babies. (In particular, sect. 153 (b) "safeguarding the health of women and infants"; and sect. 153 (1) (b) "matters relating to the admission, discharge, condition, treatment, or death of women and infants in any such hospitals" refer.)

229. The RHAs are required to purchase pregnancy and childbirth services which are available to all women, and these include:

(a) Health promotion and education for individuals, including antenatal education;

(b) Information on pregnancy and childbirth for individual women and their family/whanau;

(c) Personal care during pregnancy including confirmation of pregnancy; assessment of physical, psychological, whanau/family and social needs; planning of care, screening and preventive care; and provision of antenatal care and support;

(d) Diagnostic services;

(e) Care during childbirth, including services for delivery in the home and in hospital;

(f) Care following birth for the mother, her baby and their family/whanau in appropriate settings (hospital, other accommodation, and/or at home) for either up to six weeks following the birth or until the responsibility for care is transferred to a provider of well-child care services. Services are to include newborn screening; 24-hour access to advice; and appropriate care commencing within 24 hours after discharge from hospital or birthing facility and as required thereafter. Women should be able to have access at no charge to the listed services, according to their needs, and at the levels of availability listed above. These pregnancy and childbirth services are to be provided free to women when provided by general medical practitioners or midwives; or as in-patient, day-patient or out-patient services by Crown Health Enterprises (CHEs); or providers supplying services previously provided free by CHEs or other area health boards.

230. RHAs have recently undertaken a major review of maternity services to consider safety and quality issues, to improve the coordination and specification of services, and to ensure that women are informed of the services and choices available to them. A 1990 amendment to the Nurses Act 1977 allows midwives to practise independently and claim the maternity benefit, thus increasing women's choices for maternity care and improving continuity of care for mothers and babies.

231. Pursuant to the Maternal Mortality Research Act 1968, a committee provides information about maternal deaths which can be useful for reviewing health service practice and planning, and health promotion services.

Health education, preventive health care and family planning

232. "Health Education in Primary and Secondary Schools" is a required syllabus in New Zealand schools. The syllabus defines "health" and "health education" and sets aims and objectives for health education in schools. It sets out guidelines for developing effective programmes and highlights the need for consultation among schools, the family and the community in relation to health education.

233. Some schools have been found by the Education Review Office not to have been providing satisfactory health education in terms of the syllabus. In response the Ministry of Education has taken steps to advance the work being undertaken on the development of a new national curriculum statement on health and physical education.

234. Health education is also clearly identified within the essential learning area, "health and physical well-being", of the New Zealand Curriculum Framework. The new national curriculum statement on health and physical education is due to be distributed to schools in 1996. Government believes that the introduction of the new statement and the associated teacher professional development will give health education a renewed focus and enable a more effective understanding than previously available.

235. The PHC (up to June 1995) and RHAs (from 1 July 1995) purchase a wide range of health promotion programmes that seek to improve the health of children, young people, and their families. These include: parenting support and skills development, injury prevention, smoke-free pregnancies and child environments, promotion of breast-feeding, child hearing-loss prevention, and immunization. The PHC programmes included policy development, national coordination, local population-based strategies, involvement of primary health-care providers, and the coordinated development and distribution of health education resources. Many of these programmes are delivered in early childhood education and school settings.

236. To encourage comprehensive health promotion activities in the school setting, the PHC developed the "Healthy Schools" framework after consultation with schools and relevant health and education sector agencies. The Ottawa Charter (adopted in Ottawa in 1986) has been used as a basis of the Healthy Schools framework by adapting the action areas of the Charter to schools and agencies working with schools. Schools are encouraged to develop policies to promote the health and well-being of students and staff, create healthy school environments, involve the local community, teach skills to promote health and well-being and coordinate school health activities.

237. Reducing tobacco smoking is one of the areas targeted by the PHC with special relevance for women and their children. The Smoke-free Environments Act 1992 is administered by the Ministry of Health. The Ministry specifically targets the prevention of smoking during pregnancy, and providing a smoke-free environment for babies, in some of its health promotion programmes, with a particular emphasis on young Maori women. A recent Plunket study of 4,000 mothers (7 per cent of all live births) indicated that 68 per cent of Maori mothers had smoked during pregnancy, compared with 33 per cent for all ethnic groups.

238. The Contraception, Sterilization and Abortion Act 1977 outlines particular issues relating to contraception and sterilization in respect to young people, and sets out the circumstances and procedures under which abortions may be authorized after having regard to the rights of the unborn child.

239. Personal sexual and reproductive health services, which include family planning services, are purchased by the RHAs. These include information and advice on contraception and fertility, provision, prescription, and/or referral, for a range of contraceptive alternatives. These services are mostly provided in the community and can be accessed by self-referral. A range of settings and providers is required to ensure that services are culturally appropriate and are acceptable to young people as well as to the general child-bearing population. Services appropriate to the needs of young

people have been developed by the Family Planning Association, a non-government agency which provides contraceptives and other services. The specific youth services include youth clinics, peer educators and media awareness campaigns.

240. The fertility rate for New Zealanders aged between 15 and 19 years is 35.5 per 100,000 and is the second highest amongst OECD countries. Pregnancy and childbirth are a greater health risk for adolescents than for most other age groups, and babies of adolescent mothers are more likely to suffer health problems than those born to older women. Teenage childbearing is linked to risk for both mother and baby in terms of lower education levels and poor employment prospects. This is likely to be particularly true of Maori women who tend to have their children at a younger age.

241. The incidence of sexually transmitted diseases (STDs) is an issue of particular concern to those providing services to children and young people. Data collected does not cover all cases of STDs. However estimates indicate that 90 per cent of those attending STD clinics are aged between 15 and 39.

242. The Ministry of Health (and the Public Health Commission until 1 July 1995) is currently developing policy on a range of issues related to adolescent reproductive and sexual health.

Traditional practices

243. There are no particular traditional practices in New Zealand which are regarded as prejudicial to the health of children and requiring special measures to protect the child. However, some concern has arisen over the possibility of female circumcision being practised in refugee families among the intakes of recent years. Legislation has recently been enacted which creates specific offences relating to the performance of female genital mutilation both in New Zealand and overseas in respect of New Zealand citizens and residents.

D. Social security and child care services and facilities (arts. 26 and 18, para. 3)

244. Social security in New Zealand is delivered under the authority of the Social Security Act 1964. Unlike the systems operated in many other countries, the New Zealand scheme is non-contributory. Benefits are financed from general taxation: wage and salary earners are not required to pay regular contributions to a social security fund. An advantage of this is that people who are unable to pay contributions are covered to the same extent as wage and salary earners. The overall objective of the income maintenance system in New Zealand is to assist with meeting income needs in specified circumstances, in order to prevent undue financial hardship.

245. The benefit system is available as a safety net where people are unable to support themselves and their families adequately. The main benefits are paid as of right to those who meet income, residence and other eligibility criteria for each category. Social assistance programmes generally use the "core family group" as the unit of assessment and entitlement. The four types are: a couple without children; and couple with dependent children; a single

adult with dependent children; and a single adult without dependent children. Using the "core family group" means that the composition of the family unit is taken into account in any entitlement granted, while usually the income of adult members of the family unit is taken into account in income tests.

246. In line with its policy of social security reform, the Government has focused attention on the youth income support provisions of the social security system with a view to targeting assistance better to need, and to ensuring that incentives within the system are directed to employment, training or education rather than benefit dependency.

247. The Government's view is that parents should bear the primary responsibility for the care of their children or young people until 18 years of age.

248. However, "safety net" support is provided through the independent youth benefit described below where parents are unable to provide support or there is a breakdown in the relationship between parents and their children.

249. Benefits in the income maintenance system are administered by the New Zealand Income Support Service of the Department of Social Welfare. For the working age population the income support system is a collection of six main benefit categories, each intended to meet specific situations where there are barriers to earning a sufficient income from employment. Each benefit has its own rules. There is also a range of supplementary assistance benefits. All these benefits impact on children to some degree since they are often paid to parents.

250. The main categories of benefit are: Domestic Purposes Benefit; Training Benefit; Invalid's Benefit; Sickness Benefit; Unemployment Benefit; Widow's Benefit.

251. The following is an outline of the main cash benefits provided for children (or the parents of children), and young people.

252. Orphans' Benefit. This is paid to the principal care giver of a child whose natural or adoptive parents are either dead, unable to care for their child because of long-term illness or incapacity, or unable to be found. In 1994, 412 of these benefits were being paid.

253. Unsupported Child's Benefit. The principal care giver of a child receives this benefit if no natural parent, adoptive parent or step-parent is able to care for or support the child because of a breakdown in the child's family. A total of 3,635 of these benefits were being paid in 1994.

254. "Handicapped Child" Allowance. This is a non-taxable allowance available to the principal care giver of "a seriously physically and/or mentally handicapped child". A total of 11,087 such allowances were being paid in 1994.

255. Child Care Subsidy. The child care subsidy programme assists low-income families to access early childhood care and education by assisting them with the cost of their children attending licensed child care centres, chartered

kohanga reo, chartered Pacific Islands language nests, or chartered home-based services. Child care subsidies were being paid for 24,865 children in 1994.

256. For parents who meet the income criteria and who are engaged in education, training or employment, up to 30 hours' subsidized child care may be available. Children in receipt of the Handicapped Child Allowance up to six years of age, children of seriously ill care givers and siblings of hospitalized children may also be eligible for up to 30 hours' child care subsidy per week. Other low-income care givers can access up to nine hours' subsidy per week.

257. Domestic Purposes Benefit. The Domestic Purposes Benefit provides financial support for people over the age of 18 who are single parents with children they support and care for. (It is also available to older women living alone, and persons caring for someone who is sick or frail.) A total of 100,256 Domestic Purposes Benefits were being paid in 1994, of which 96,706 were to single parents.

258. Widow's Benefit. This provides income support to widows with or without children to assist with everyday living costs. In 1994, 9,003 Widow's Benefits were being paid, 2,934 recipients of which had dependent children.

259. Independent Youth Benefit. In general, most 16- and 17-year-olds are expected to be dependent on their parents. In some situations this is not appropriate and income support is available, for example where a young person is undergoing training (Training Benefit) or where young people aged 16 or 17 cannot live with their parents (in some cases because of a breakdown in the relationship, or because of abuse) or be supported by them. In mid-1994, 3,264 Independent Youth Benefits were being paid.

260. From the age of 18, young people are eligible for the Unemployment Benefit, Sickness Benefit, Training Benefit and Invalid's Benefit.

Reform of the Social Welfare Administration

261. The Department of Social Welfare has for many years been responsible for the provision of social work and other welfare services for children and families, for the provision of income support and for the funding of community groups providing welfare services. Since the mid-1980s government support for programmes run by voluntary welfare organizations has substantially increased and the community has become more involved in providing social welfare. The Government has promoted a mixed economy of social service providers. The Department of Social Welfare also now delegates more of its responsibilities to the local, district and regional levels. Issues of access to, and the cultural appropriateness of, services have also led to a wider range of providers.

262. The trend in this direction led to a focus on re-separating the different functions of the Department of Social Welfare. In 1992, distinct business units were formed within the Department: The New Zealand Income Support Service (to which reference has been made at the start of this section in relation to the administration of benefit schemes); the New Zealand Children and Young Persons Service (the functions of which have been referred to at

various points in the report, especially in sects. V and VIII); and the New Zealand Community Funding Agency. As well, the Social Policy Agency was established to provide social policy advice to the Government.

The New Zealand Community Funding Agency

263. The work of this Agency is mentioned in the discussion relating to other articles, for example under article 18 (at para. 114) and article 23 (at para. 205). The Agency is responsible on behalf of the Government for the allocation and delivery of funding and support to community-based social and welfare service providers throughout New Zealand. During the 1994/95 financial year $98 million were allocated by the Agency to almost 1,600 service providers. The Agency is responsible for administering programmes under the Children, Young Persons and Their Families Act 1989, the Disabled Persons Community Welfare Act 1975, and the Social Security Act 1964. The Agency has also established an accreditation system for social and welfare service providers. It is the only organization in New Zealand which offers this service.

264. Under the Children, Young Persons and Their Families Act, the Agency funds programmes for Child and Family Support Services and community-based social services. Under this Act the Agency is also responsible for the approval of Child and Family Support Services, Iwi Social Services, Cultural Social Services, and community services for families. Under the Disabled Persons Community Welfare Act, it pays subsidies to organizations providing services for home-based care, residential care and vocational rehabilitation for people with disabilities.

265. The Agency funds social and welfare service providers working in the field of:

(a) Families in need of support, including women's refuges, parenting programmes, family/whanau resource development, youth programmes and residential care;

(b) Community welfare, including refugee services, sexual abuse programmes and victims' support groups;

(c) People with disabilities, including vocational opportunities and employment placement for people with disabilities;

(d) Community housing, including support for emergency housing, housing for victims of domestic violence, housing for youth at risk.

E. Standard of living (art. 27, paras. 1-3)

266. Under the Crimes Act 1961 (sect. 152) everyone who is a parent or a person in place of a parent must provide the necessaries of life for any child under the age of 16 in his or her actual custody. This duty is imposed whether the child is helpless or not, and criminal responsibility is incurred if the death of the child is caused, his or her life endangered or health permanently injured by omission to do so.

267. The Child Support Act 1991 obliges parents to maintain their children regardless of the parents' marital situation, and whether or not the parents are guardians of their children. (Further detail on this provision has been given in the report in sect. V.E relating to art. 27, para. 4, at para. 140.)

268. The Matrimonial Property Act 1978 (sect. 26 (1)) provides that in making matrimonial property orders the court must have regard to the interests of any minor or dependent children of the marriage, and it may make an order settling the matrimonial property or any part of it for the benefit of the child. Section 28 A of the same Act provides that in making tenancy or occupation orders under the Act, the court shall have particular regard to the need to provide a home for any minor or dependent children.

269. In addition to the range of social welfare benefits described under article 26 above, two forms of financial support to families are operated through the taxation system. These are the Family Support tax credit and the Guaranteed Minimum Family Income tax credit.

270. Family Support is designed to help low-income families. It is paid either by the Department of Social Welfare if the recipient is a beneficiary, or by the Inland Revenue Department to the main child-carer in the family. Increased rates for family support were announced in the 1993 and 1994 budgets.

271. Guaranteed Minimum Family Income is a tax credit paid in addition to family support. It ensures that all New Zealanders in employment with dependent children have a set minimum weekly income. A single parent must be employed for 20 hours and a two-parent family for 30 hours a week. The credit is available to all families with children whose gross yearly income is less than $18,363. A family with such an income will receive a tax credit through the scheme to bring its after-tax income up to $278 per week.

272. New Zealand is a developed country with a relatively high standard of living. Within the OECD, New Zealand's per capita GDP in 1992 was at 78 per cent of the average for all OECD countries, placing it nineteenth out of the 24 member countries. Since the mid-1980s, the economy has been extensively restructured. The ultimate goal of the economic reforms has been to guarantee to all New Zealanders a higher standard of living based on sustainable economic growth. However, this has not been without an impact on some sections of the community who have experienced economic and social difficulties in adjusting to the changes. Children in families dependent on a single parent benefit or other benefits such as the unemployment benefit are, generally speaking, most vulnerable to economic hardship. An aspect of the reform has been debate about the level of benefits, and an increase in family support rates has in part been a response to this debate. The social welfare benefit system, described in the preceding section, remains available as a "safety net" for the most vulnerable groups as noted above. Reforms in the social welfare area have also placed a greater emphasis on community and voluntary organizations providing assistance.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance (art. 28)

273. The principal legislation in this area is the Education Act 1989. The Ministry of Education is responsible for the administration of the Act and for providing policy advice to the Minister of Education on all aspects of education, from early childhood to tertiary, overseeing the implementation of approved policies and ensuring the optimum use of resources devoted to education. The Ministry provides funding to early childhood centres, schools, universities, polytechnics and colleges of education, and ensures this money is distributed according to government policy.

274. The Ministry is responsible for developing national guidelines on aspects of education, including national curriculum requirements which all schools must fulfil. It also collects, analyses and disseminates education statistics and it manages school property.

275. Since major reforms of education in 1989, all State primary and secondary schools in New Zealand are governed by boards of trustees. Each board is the employing and administering authority for its school. The board of trustees is accountable in law for performance in all aspects of the school's operation. Boards are elected by parents of children attending the school, for a term of three years. Membership is composed of parents and staff (including the principal) and may also include a student. Additional members may be co-opted to ensure a balance of gender and a reflection of the ethnic and socio-economic character of the community. Responsibility for school administration has thus been effectively decentralized. Boards operate under a charter developed in consultation between the principal, the staff and the community, approved by the Minister of Education. The charter defines the purposes of the school and its intended outcomes. While every charter includes certain compulsory elements set down by the Minister, it also takes account of the particular interests of the pupils, the special skills of the staff, and the resources and wishes of the community. Information on other parts of the institutional infrastructure is provided at relevant points of this report.

276. The Education Review Office is an independent audit and review agency established in 1989 to investigate and report on education in New Zealand schools. Education Review Office reports are a primary source of information on the performance of schools and on student achievement in schools. During investigations by the Office and in Office reports on individual schools the attention of boards of trustees is drawn to their contractual obligations and undertakings. Where concerns are raised about the quality of education provided for children who are exempted from attendance at school and the Chief Review Officer considers an investigation is justified an accountability report is prepared. Since 1990 the Office has reviewed all schools at least once and reported publicly on their performance. At present the Office undertakes two types of investigation in schools and publishes two types of reports. Accountability reporting evaluates the extent to which boards of trustees are meeting their undertakings and obligations set out in their charters and in regulation and legislation. Effectiveness reporting evaluates

the extent to which students' educational progress and achievement have been successfully promoted by schools' governing authorities and their teaching staff.

Free and compulsory primary education

277. Under section 3 of the Education Act 1989, all New Zealand citizens are entitled to free primary (and secondary) education in a State school between the ages of 5 and 19. Some schools ask students to pay a specific amount as a "school fee" to assist with the costs of the school activities and materials. Payment of this "fee" is voluntary. Education is compulsory between the ages of 6 and 16 years. However, most children start attending primary school from the age of 5 years.

Different forms of secondary education

278. As at 1 July 1994 there were 2,386 State schools in New Zealand of which 2,042 were primary, 257 were secondary, 37 were composite, and 49 were special. There was one correspondence school. There were also 281 integrated schools, 121 private fully registered schools, and 16 private provisionally registered schools. A composite school includes students from age five to school-leaving age. Special schools are schools for students with hearing, visual, intellectual or physical impairment, health camps and hospital schools. Integrated schools follow the State curriculum requirements but retain their "special character", e.g., religious observances. The proprietors provide the accommodation while the State pays day-to-day expenses, including teachers' salaries. Private schools are required to satisfy certain standards set by the Ministry of Education. Fully registered private schools may receive an operational grant and a 20 per cent subsidy for teachers' salaries. In 1996 the subsidy will increase to 17 per cent of the average total cost of State schooling and further increases are planned for 1997 and 1998. Provisionally registered private schools receive no State funding.

279. Students with physical or other disabilities may be enrolled in mainstream classes at a local school. In addition, a range of special education services (which may vary according to locality) are available for those students whose needs may not be met by full-time education in a mainstream class or whose parents choose a specialist facility. Further detail on education for children with disabilities has been provided in the report under section VI.B, paragraphs 201 and 202 above, in relation to article 23. Children with emotional and/or psychological difficulties can access the services of guidance counsellors within schools, visiting teachers and educational psychologists attached to the Special Education Service. In addition, schools can purchase programmes from other agencies to address particular emotional and psychological needs of students.

280. An exemption from school attendance to permit home schooling may in certain circumstances be granted by the Secretary for Education, provided that pupils are taught as regularly and as well as in a registered school. Home schooling is not monitored by the Education Review Office unless concerns are

brought to the Office's attention. The Ministry of Education is currently investigating ways in which the procedures for granting exemptions for home schooling can be tightened.

281. The correspondence school provides education for students who cannot attend a school because they live in remote areas, are overseas, or because of illness or other reasons.

282. On completing form 2 of primary education, usually after eight years of schooling, a child normally enters form 3 of a secondary school, or alternatively form 3 in an area school or a form 1-7 school. Only 3 per cent of all secondary students attended a private secondary school in 1993.

283. The National Education Goals make equality of education opportunity for New Zealanders integral to the education system (goal 2). The Government is also committed to increased participation and success by Maori through the advancement of Maori education initiatives, including education in te reo Maori (Maori language), consistent with the Treaty of Waitangi (goal 9). Goal 10 promotes respect for the diverse ethnic and cultural heritage of the New Zealand people, with acknowledgement of the unique place of Maori, and of New Zealand's role in the Pacific and as a member of the international community. These goals are to be achieved through the identification and removal of barriers to achievement. Boards of trustees, through the principal and staff, are required to analyse barriers to learning and achievement, and to develop and implement strategies which address identified learning needs in order to overcome barriers to students' learning.

Educational and vocational information and guidance

284. State schools are required under the Education Act 1989 (sect. 77) to ensure that students receive good guidance and counselling in matters relating to their education, and to inform parents of matters that may be impeding a student's progress through the school or harming his or her relationship with teachers or other students.

285. Changes to vocational guidance programmes since 1989 have included the establishment of the Careers Service. The Service produces career and education information in a variety of media, including the Careers Library, which stores leaflets and information about work and training options, and the Quest Database, an easy-to-use computer database which describes more than 500 jobs and courses. Quest is available in the Service's offices nationwide, in most secondary schools, many tertiary establishments, libraries, offices of the New Zealand Employment Service nationwide, and on educational publications.

286. The Careers Service also promotes cooperation between schools and enterprise by operating a number of information exchanges relevant to career development and employment.

287. The New Zealand Qualifications Authority, set up under the Education Act 1989, provides a framework within which students may accumulate unit standards towards a national certificate, national diploma or degree. The national qualifications are built on a framework of eight levels. "Unit

standards" form the basis of a course of study. Each unit has a number of elements. The units are assigned to one of the eight levels. (A national certificate is awarded at levels one to four, the national diploma at levels five to seven, and degrees at levels seven and eight.) In order to maximize the opportunity for learning, unit standards may be acquired at a range of places - in schools, polytechnics, private training establishments, wananga, and also in the workplace. The aim of the National Qualifications framework is to create a "seamless" education and training system, based on units, which integrates traditional secondary education, industry training and tertiary education, thus bringing together general education and vocational education and training into a single model. Since the introduction of the framework, nationally recognized units and qualifications are being made available in a wide range of industries and skill areas for the first time. The transition to the new system is scheduled to be complete by 1996.

288. Vocational unit standards are available at schools, tertiary institutions, private training establishments and workplaces. This framework gives students flexibility in obtaining appropriate training and increases the range of options available to them in vocational training.

289. The Education and Training Support Agency develops and administers training for individuals preparing to enter or re-enter the workforce, or who are participating in work-based training. One of the Agency's major training schemes is the Training Opportunities Programme (TOP), which aims to give early school leavers, others with low qualifications, and the long-term unemployed a change to obtain training for employment and a recognized qualification, or credit towards one.

290. The Agency is also charged with implementing the Government's industry training strategy. This involves, through the development of Industry Training Organizations, the expansion of systematic employment-based training beyond the traditional apprenticeship and primary industry cadet schemes. The industry training policy and the development of national qualifications together form the "Skill New Zealand" campaign.

Higher education

291. Improving access to higher education is an important objective of the Government's education policy overall. Between 1985 and 1993, the participation rate for 18-year-olds in tertiary education rose from 25 per cent to 34 per cent.

292. A factor in the increase in tertiary student numbers was the introduction in 1992 of the Student Loan Scheme, designed to assist more students to participate in tertiary education. Under the scheme, eligible students can receive a loan from the Government to cover fees, some course-related costs, and some living costs. Interest is charged on loans, which are repayable through the taxation system at a level based on assessable income. In 1993, 61,500 students used the loan facility.

293. Under the Study Right policy, also introduced in 1992, the Government pays a subsidy towards the estimated tuition costs according to a student's Study Right status. Students who satisfy the criteria of Study Right are

eligible for a higher rate of subsidy. The Study Right policy is part of the Government's strategy to encourage school leavers to continue with tertiary education and training. Consequently, students eligible for Study Right are largely those aged under 22 at first enrolment.

294. In addition to Study Right and student loans, the Government operates the Student Allowances Scheme, currently providing a range of allowances for tertiary students aged 16 years and over and for secondary students aged 18 years and over before 1 January in the year of study. For most students, the rate of allowance depends on the student's age, parental income, and whether or not the student lives at home. Students living away from home may also qualify for an accommodation benefit in some cases. As at mid-1993, a total of 45,000 student allowances in all categories were being paid through the Ministry of Education.

295. A new system for funding tertiary institutions was introduced in 1991. The Equivalent Full-Time Student (EFTS) system funds tertiary institutions in bulk according to the number of students and the courses that those students are taking. Polytechnics, colleges of education, universities and wananga receive State subsidies for the number of equivalent full-time students in each of the course cost categories at their institution. Since 1992, EFTS funds have also been available to private training establishments through a contestable fund.

Measures to encourage regular attendance at school and the reduction of drop-out rates

296. The Education Act 1989 requires school boards of trustees to take all reasonable steps to ensure that students attend school (sect. 25). Parents are liable to be fined if their children, enrolled at a registered school, do not attend for four hours or more each day, or if the children do not do the work of a correspondence course in which they are enrolled (sect. 29).

297. While there is no evidence that persistent truancy is at a higher level in New Zealand than in comparable societies, it nevertheless remains a major concern for Government, schools and parents alike. In 1992, the Ministry of Education distributed a truancy protocol to all schools, with a view to clarifying roles and standardizing processes. Under the protocol the Department of Social Welfare provides assistance by arranging Family Group Conferences (FGC) for the most persistent truants.

298. The protocol was reviewed in 1993. The evaluation showed that in 1993, 112 schools made referrals to the Department of Social Welfare and that in over 70 per cent of the cases where a FGC was held the student returned to school. In late 1993, a working party involving the New Zealand School Trustees Association, the Ministries of Education, Youth Affairs, Maori Affairs and Police, and the Departments of Justice and Social Welfare, was set up to address the problem of truancy and absenteeism. Also, an inquiry by a Select Committee of Parliament into children in education at risk through truancy and behavioural problems resulted in a number of recommendations being made. The Government has given careful consideration to the recommendations. In response to these, provision was made in the 1995 budget which includes an

enhancement of the existing truancy initiative programme with contestable funds of $1 million, $2 million, and $3 million over successive years from 1995/96.

299. In addition, schools are receiving additional assistance to set up and monitor attendance systems; and community groups and interested government agencies have taken initiatives at the local level to reduce truancy in their areas. A truancy prevention scheme, trialled in some schools in 1993, involved a community organization working with schools, students and families to restore regular attendance at school.

300. Concern has also been expressed at the disproportionate numbers of Maori and Pacific Island students who are suspended or expelled from school. Specific provisions regarding suspension and expulsion procedures are described in sections 13-18 of the Education Act 1989. Boards of trustees may exercise discretion as to the extent to which they involve students in the suspension process.

301. During the past decade, especially in the five years to 1993, retention rates for students attending senior secondary school have increased at an accelerating rate. Over that period, the retention of third form entrants through to a year in the sixth form increased from 54 per cent to 85 per cent, and seventh form retention increased from 17 per cent to 44 per cent. Although there has been a significant improvement in retention figures for Maori students (61 per cent of Maori now leave after four or more years at secondary school, compared with 40 per cent in 1986), Maori continue to be under-represented at the upper levels of secondary school. As at March 1994, 62 per cent of all students who entered secondary school five years earlier are retained, compared with 26 per cent 10 years earlier. Major reasons for this improvement were the raising of the school-leaving age from 15 to 16 years in 1992; the significant decrease in availability of jobs for school leavers during a time of economic restructuring; and government policies aimed at increasing the skill levels of the population, especially young people.

302. Between 1990 and 1993, the overall proportion of students who left school with a seventh form award (i.e. the highest level) increased from 33 per cent to 38 per cent. In 1993, 35 per cent of all male school leavers and 40 per cent of all female school leavers gained seventh form awards; and proportionately fewer females than males left school with no formal qualification (14 per cent of all female school leavers, compared with 17 per cent of all male school leavers).

School discipline

303. The use of corporal punishment in early childhood centres or registered schools is prohibited under the Education Act 1989. At the same time, it is recognized that pupils need a secure and orderly environment in which to develop and learn, and codes of discipline may contribute to that. It is the responsibility of the Education Review Office to investigate and report on all requirements on schools.

304. As mentioned in paragraph 300 above, the Education Act allows for suspensions and expulsions from school, under specified conditions. (Only

pupils over the compulsory education age limit may be expelled.) Most suspensions are for a period of up to three days. This allows for a cooling-off period to enable students to reassess their situation. Schools must notify the Ministry of Education whenever a pupil is suspended.

International cooperation

305. New Zealand is a member of various intergovernmental organizations concerned with education. It participates in education activities of the United Nations Educational, Scientific and Cultural Organization, the Commonwealth Secretariat, and the OECD (Education Committee), as well as of a large number of organizations such as the Australian Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), Asian Pacific Economic Cooperation (APEC), Pacific Circle Consortium (PCC), and the South East Asian Ministers of Education Organization (SEAMEO).

306. The Ministry of Education contracts a range of bilateral educational and cultural exchange activities to the New Zealand Council of Teacher Education. Each year, teacher exchanges are arranged between New Zealand, the United Kingdom, Australia, Canada and Germany. The New Zealand-Japan Exchange Programme provides financial and administrative support for a wide range of activities for schoolteachers, artists and scholars. There are also opportunities for study visits by New Zealand teachers to Japan or in-service support for teachers of Japanese in New Zealand by visiting Japanese lecturers. Other exchange activities include overseas in-service training for teachers of French, German and Spanish.

307. New Zealand also contributes to international efforts to eliminate illiteracy and promote education in developing countries through its Official Development Assistance (ODA). For example, New Zealand's multilateral programme includes an annual contribution ($900,000 in the 1994/95 financial year) to the United Nations Children's Fund (UNICEF) which is closely involved in promoting implementation of the Convention. Human resource development is a key element of New Zealand's bilateral assistance, which goes predominantly to South Pacific and South-East Asian countries. Individual ODA country programmes therefore often include components to strengthen education systems and institutions within the partner country. New Zealand also offers study and training awards and scholarships which are tenable at a range of institutions in New Zealand, the partner country, and/or in "third countries" (in most cases regional educational institutions of the South Pacific).

B. Aims of education (art. 29)

308. Under section 61 of the Education Act 1989, each board of trustees must have an approved written charter of aims, purposes and objectives. Every charter shall be deemed to contain the aim of achieving, meeting and following the National Education Guidelines. The new National Education Guidelines, which took effect from April 1993, contain a statement of goals for education in New Zealand, as well as curriculum and administrative requirements. These are referred to under the section on different forms of secondary education.

309. The New Zealand Curriculum is the official policy framework for teaching, learning and assessment in New Zealand schools. The New Zealand Curriculum

Framework (1993) specifies seven essential learning areas for New Zealand students: language and languages; mathematics; science; technology; social sciences; the arts; and health and physical well-being. It also sets out the essential skills to be developed by all students: literacy; numeracy skills; information skills; problem solving skills; communication skills; self-management and competitive skills; social and cooperative skills; physical skills; and work and study skills.

310. Included within the framework is a range of principles which give direction to the curriculum in New Zealand schools. They are based on the premises that the individual student is at the centre of all teaching and learning, and that the curriculum for all students will be of the highest quality. The principles affirm and reflect New Zealand's identity.

311. The New Zealand Curriculum Framework also recognizes the importance of fostering attitudes and values including honesty, reliability, respect for others, respect for the law, tolerance (rangimarie), fairness, caring or compassion (aroha), non-sexism, and non-racism.

312. Both the Human Rights Commission and the Office of the Race Relations Conciliator have important educational responsibilities under the Human Rights Act 1993. Both Offices have growing links with the Ministry of Education to develop human rights aspects to the draft social studies curriculum. The Commission is also working with the Ministry in the development of a set of guidelines for dealing with sexual harassment in schools. Officers from the Commission and the Conciliator's office undertake visits to schools (as well as polytechnics and universities) throughout the year on request. They address students on the work of their offices and also regularly meet teachers and teacher organizations to discuss teaching in the human rights and race relations fields.

313. There are a number of police initiatives to reduce the risk of children and young people becoming victims or perpetrators of crime. The police acknowledge the value of education in the development of a comprehensive Policing Strategy. The Drug Abuse Resistance Education Programme "DARE" has a component specifically directed at parents called "Dare to Support Your Kids". Police encourage children to keep safe and to be aware of lifestyle risks such as drug and alcohol abuse. Programmes also aim to counter messages inciting or encouraging violent behaviour. The police have invested considerable resources in the development of youth educational programmes and are expanding these programmes into a wider Youth Strategy.

314. The Ministry of Education also works with other government departments and voluntary agencies such as the United Nations Association of New Zealand to develop programmes in schools for the promotion of awareness of United Nations activities in the fields of human rights, conflict resolution, and peace.

315. The Ministry for the Environment and the Department of Conservation work with schools in education programmes to encourage respect for the natural environment.

C. Leisure, recreation and cultural activities (art. 31)

316. The Government acknowledges the importance in the development of children of play and of participation in cultural and artistic activities. A focus on leisure, recreation and cultural activities within the New Zealand Curriculum Framework, referred to in paragraph 309 above, is particularly well expressed in the essential learning areas of health and physical well-being, and the arts. The draft national curriculum statements in health and physical education, and the arts will be published in 1996. The final statements in health and physical education will be distributed to all schools in 1996 and the final statement for the arts in 1997.

317. New Zealand is fortunate in having the type of terrain and climate that is conducive to outdoor activity, with good access to an extensive and varied park system, including national, forest and maritime parks, providing a wide spectrum of recreational opportunities. Organized sport is an important feature of the New Zealand way of life for many children. It forms part of the physical education activity within schools; and it is the focus of a great deal of weekend activity, promoted and organized largely by voluntary organizations covering a wide range of sports.

318. The principal legislation in this area is the Sport, Fitness and Leisure Act 1987. It provides for an independent statutory body - the Hillary Commission for Sport, Fitness and Leisure - which initiates, supports, and facilitates programmes and policies aimed at raising the quantity and quality of active participation in sport, fitness and leisure among all age groups of New Zealanders, at all levels of competence. Many young people take part in mixed gender sport, although it is possible to restrict participation to one sex from age 12 without breaching the Human Rights Act under an exception contained at section 49 of the Act.

319. Three of the Commissions's programmes are particularly aimed at children: KiwiSport, Sportfit and Firestone Fair Play. KiwiSport teaches children a number of sport-related skills, with a strong emphasis on fun and fair play, to encourage them to try activities with the long-term aim of enjoying life-long participation in sport, fitness and leisure. In addition, the Sportfit Sports Education model provides students with the opportunity to learn a host of skills (including coaching, refereeing and administration) to enable them to participate and be active in sport throughout their lives. The model is offered in approximately half of the country's secondary schools. Firestone Fair Play encourages children to develop a strong sense of fair play and ethics in sport.

320. The Commission's KiwiAble programme is designed to encourage people with disabilities, including children, to participate in the sport, fitness and leisure activities of their choice.

321. Services to provide care and recreation for children aged between 5 and 12 years (although some programmes provide for children up to 14 years) after school and during school holiday periods (known as OSCAR services - "Out of School Care and Recreation") are being provided in a growing number of schools. The children attend educational and recreational programmes conducted in safe and appropriate environments. Parents pay a fee for the

services, which are most highly developed in larger urban areas. In most cases, the children's parents are in employment or training, although some parents use OSCAR to provide only children with social opportunities.

322. The New Zealand Defence Force, in partnership with local communities, sponsors and supports the New Zealand Cadet Forces, comprising 3,868 cadets and 419 officers in 98 units of the Sea Cadet Corps, New Zealand Cadet Corps, and Air Training Corps. Involvement in the Cadet forces is voluntary.

323. In 1991 the Government established the Ministry of Cultural Affairs/Te Manatu Tikanga-a-Iwi, by Order in Council. The Ministry assists the Government in the provision and management of cultural resources for the benefit of all New Zealanders. The Ministry would like to be able to undertake a comprehensive analysis of the cultural experiences of specific groups in New Zealand society, such as children and young people. Demographically cross-classified cultural data will, however, become more readily available as part of a project recently initiated by the Ministry of Cultural Affairs and Statistics New Zealand to improve statistical information on cultural activity in New Zealand.

324. The Ministry of Youth Affairs administers New Zealand's involvement in the Commonwealth Youth Programme. The Programme has a six-point plan of action: operating regional youth development centres, administering youth bursaries and study fellowships, investigating applied research, developing youth information services, assisting local youth projects, and supporting youth programmes.

325. As part of the community-oriented policing style adopted by the police, community policing centres develop ad hoc community-based programmes targeting at-risk teenagers, and those younger. Programmes include "Blue Light" dances and events, and the provision of leadership in outdoor, sporting and other youth activities.

326. Among the wide array of other government departments, corporations and statutory bodies concerned with recreation in New Zealand, the Department of Conservation is a principal land manager in the sphere of outdoor recreation, and the Department of Internal Affairs administers a number of programmes to help community organizations provide for the needs of young people. The Ministry of Education contributes to the funding of the New Zealand School of Dance and the New Zealand Drama School.

327. The Department of Internal Affairs community advisory staff provides support to community agencies, including those working with families, youth and children. The Department also administers the Community Organization Grants Scheme (COGs). "Youth", as a target group, receives approximately 26 per cent of available grants. The Community Project Worker Scheme (CPWS) and the Youth Worker Training Scheme (YWTS) support youth workers in the community.

328. Internal Affairs Link Centres provide easy access for the public to Internal Affairs material as well as a range of government information, including information of interest to families and agencies working with

children and young people. Material is held and conveyed on behalf of 15 other government departments including the Ministry of Youth Affairs.

329. Under the Gaming and Lotteries Act 1977, the Department of Internal Affairs administers lottery profits through a wide range of distribution committees. In 1993/94 the Lottery Youth distribution committees distributed $6.25 million. A similar amount will be distributed in 1994/95.

VIII. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency

1. Refugee children (art. 22)

330. Refugees, including children, may be admitted to New Zealand under the New Zealand Refugee Quota Programme or may be granted asylum under the Government's refugee status determination procedures. For the year ending June 1995, 341 children entered New Zealand under the New Zealand Refugee Quota Programme, out of a total of 823 refugees.

331. The Quota Programme was set up pursuant to a Cabinet directive. New Zealand's annual quota is 800 refugees, a number established having regard to New Zealand's capacity to absorb and adequately provide for the special needs of refugees. A child care centre is available at the Mangere Refugee Reception Centre and orientation classes cater for a range of ages. A review of the Quota Programme is currently being undertaken by the New Zealand Immigration Service, involving all aspects of resettlement. As a party to the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, New Zealand has also established formal procedures for determining refugee status. These procedures, developed in consultation with the United Nations High Commissioner for Refugees, have been supplemented by the formal Terms of Reference of the New Zealand Immigration Service and of the Refugee Status Appeals Authority. Like the Quota Programme, the procedures and the Terms of Reference are established by Cabinet directive and are not governed by statute. When an application for refugee status is declined claimants have the right to lodge an appeal against the decision to the Refugee Status Appeals Authority. The Office of the Untied Nations High Commissioner for Refugees (UNHCR) is represented on this Authority.

332. Refugee children are usually admitted to New Zealand as part of a family group. Selection criteria tends to favour those refugees, including children, who are in family groups. In addition, the Government has a specific "women at risk" category under which many children of single mothers have been admitted. In the period under review no unaccompanied children were admitted to New Zealand, but the Government would consider any request by the UNHCR for admission of such children in accordance with normal procedures.

333. A fundamental goal of New Zealand's refugee policies is to achieve the integration of refugees, including children, into New Zealand. This is an area of close partnership between the Government and the community, including non-governmental agencies. Newly arrived refugees attend a six-week orientation programme at the Mangere Refugee Reception Centre in Auckland,

administered by the New Zealand Immigration Service. The Ministry of Education and the Auckland Institute of Technology, North Health Regional Health Authority and the Refugee and Migrant Service (a non-governmental organization which receives government funding to coordinate refugee sponsorship) are also involved in the Centre's programmes. Health screening, education (including English language instruction) and social work assistance are the most important aspects of the orientation programme. The health services provided cater for the general needs of children and their families. Refugees are then resettled throughout New Zealand, either with a relative or a sponsor, whose role is to assist the refugees to adjust to their new country. Attention is given by the Ministry of Education to meeting the educational needs of refugee children, as well as other children, who require support in acquiring English as a second language. This is achieved through a system of discretionary funding and staffing policies through liaison with New Settler Coordinators based at Colleges of Education. A teacher has also been assigned specifically to work with the Mangere Centre on the placement of refugee students with disabilities, and to follow up after their placement, in recognition of the multiple difficulties such students face.

334. Refugees accepted under the Refugee Quota Programme have the status of residents of New Zealand. As such they have all the entitlements of residents in matters such as education, health, employment and social welfare. They also have the same protection from discrimination afforded by the Human Rights Act 1993, including on the basis of race and ethnic or national origin (which includes nationality or citizenship). Asylum seekers awaiting determination of their applications for refugee status are able to be granted special assistance by the Government in the areas of social welfare, employment, health, education and legal aid for the presentation of cases to the Refugee Status Appeals Authority. Under New Zealand law, income support (as described in the report under article 26 above) and free education (discussed under article 28 above) are not available to people who are in New Zealand illegally. In some circumstances, where there are specific care and protection concerns in respect of any children involved, the Department of Social Welfare is also able to intervene under the Children, Young Persons and Their Families Act 1989 to address them.

335. In the administration of the Refugee Quota Programme, New Zealand works with organizations such as UNHCR, the International Committee of the Red Cross and the International Organization for Migration to trace family members of refugees, including children, and achieving the family reunification of refugees. Family reunion is one of the five categories under which places are allocated under the Quota Programme. (The others are women at risk, medical/disabled, emergency, and protection.) Refugee children in New Zealand may be granted citizenship upon application and payment of a fee, although applications are not made in every case. Normal citizenship is then granted.

336. It is appropriate to note here the reservation entered by New Zealand at the time of ratification of the Convention, reserving the Government's right to continue to distinguish as it considers appropriate in its law and practice between persons according to the nature of their authority to be in New Zealand including but not limited to their entitlement to benefits and other protections described in the Convention.

2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)

337. Under the Defence Act 1990 (sects. 36 and 37), enlistment in the armed forces without parental consent is possible at 18 years of age and with parental consent at 16 years and 6 months (Navy), 17 years and 6 months (Army) and 16 years and 6 months (Airforce). Current recruitment policy for the various services is: Army and Airforce, 17 years and 6 months; Navy, 16 years and 6 months. The Defence Act contains age limits on the deployment of members of the armed forces outside New Zealand. These are 18 years for the Army and Airforce and 16 years and 6 months for the Navy.

338. New Zealand is party to the Geneva Conventions of 1949 and the two 1977 Protocols Additional to the Geneva Conventions.

339. A health centre for refugees who have suffered torture and trauma has been established in Red Cross premises in Auckland. The Centre is supported by the Mental Health Foundation and North Health Regional Health Authority.

B. Children in conflict with the law

1. The administration of juvenile justice (art. 40)

The rights of children alleged to have or recognized as having committed an offence

340. New Zealand has a separate youth justice system, established under the Children, Young Persons and Their Families Act 1989. This legislation places great emphasis on the rights of children and young people to due process and respect, and the involvement of families in decisions about their children and young people who have offended. The Act applies to children (under 14 years of age) and young persons (of or over 14 but under 17 years of age). One of the objects of the Act (sect. 4) is to ensure that children or young persons who commit offences are held accountable for their behaviour and dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial and socially acceptable ways. Also relevant in this context is the New Zealand Bill of Rights Act 1990 (sect. 25) which affirms the right, in the case of a child, to be dealt with in a manner that takes account of the child's age.

Relevant provisions of the New Zealand Bill of Rights Act 1990

341. The New Zealand Bill of Rights Act 1990 (sect. 26 (1)) affirms that no one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence under New Zealand law at the time it occurred. This right is also affirmed in section 10 A of the Crimes Act 1961 which provides that criminal enactments are not to have retrospective effect. Section 25 (c) of the New Zealand Bill of Rights Act affirms that everyone who is charged with an offence has the right to be presumed innocent until proven guilty according to the law; and section 23 (1) provides for the right of everyone who is arrested or detained under any enactment to be informed of the reason for this at the time of arrest or detention, as well as to consult and instruct a lawyer without delay. The right of everyone who is

charged with an offence not to be compelled to be a witness or to confess guilt is affirmed in section 25 (d) of the Act; and section 25 (f) provides the right to any such person to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution. If convicted, everyone has the right under section 25 (h) of this Act to appeal according to the law to a higher court against the conviction or the sentence, or both.

Relevant provisions of the Children, Young Persons and Their Families Act 1989

342. The Children, Young Persons and Their Families Act 1989 applies to children and young people under 17 years of age. Particularly relevant sections of the Act are quoted here for ease of reference. Section 208 (a) states the principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter. Section 208 (c) provides that any measures for dealing with juvenile offending should be designed to strengthen the family (or extended family) of the child or young person and to foster its ability to develop its own means of dealing with offending by its children and young persons. Section 208 (d) stipulates that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public. Section 208 (f) states, inter alia, that any sanctions imposed on a child or young person who commits an offence should take the least restrictive form that is appropriate in the circumstances. Section 208 (h) states the principle that the vulnerability of children and young persons entitles them to special protection during any investigation in which they may be involved. Sections 215-217 make special provision for enforcement officers to explain rights to children and young persons when questioning them in relation to the possible commission of an offence.

343. A recent amendment to the Act alters the point at which an enforcement officer is required to inform children and young people of their rights during the process of questioning them in relation to an offence. They are now obliged to do so at the point when they have reasonable grounds to suspect the commission of an offence or when questions are intended to obtain an admission of an offence. If a child or young person asks about their rights at any stage the enforcement officer must still explain what those rights are.

344. The Children, Young Persons and Their Families Act provides special protection for children and young people (above and beyond that accorded to adults) during the investigatory process, and gives effect to the principle that the vulnerability of children and young persons entitles them to special protection. In complying with the investigatory requirements of the Children, Young Persons and Their Families Act, police maintain contact with numbers of adults (usually upstanding members of the community, e.g. justices of the peace) to ensure that an appropriate support person and/or legal adviser is available to support a child or young person being interviewed by the police in relation to an offence. Police facilitate access. Children and young people are entitled to name a nominated adult who should be contacted and only as a last resort, if such a nominated adult is not able to be contacted, should the police call on their list of "support" persons. The role of the nominated person is to take reasonable steps to ensure that the child or young

person understands his or her rights and to support them before and during any questioning or during the making or giving of any statement. Nominated persons are briefed on arrival as to what is required of them and are also handed a form which fully describes the statutory rights and expectations of both the nominated person and the child or young person. Nothing that a young person says, unless it is a spontaneous admission, can be used in court unless it was given in the presence of an adult of the young person's choice. Children and young people are afforded all the rights of an adult defendant during the course of a prosecution, including access to information concerning the case made out against them.

345. Information about counsel for the child has been provided in the report under section III, with regard to article 12 (respect for the views of the child). Section 227 of the Children, Young Persons and Their Families Act sets out the child's or young person's right to consult with a barrister or solicitor, and that the enforcement officer must inform the child of that right. When a child or young person appears before a Youth Court charged with an offence, a youth advocate is appointed if the child or young person is not represented by counsel or the court is not satisfied that legal representation has been or will be arranged. The youth advocate (a barrister or solicitor) will so far as possible be appointed because his or her personality, cultural background, training and experience make him or her suitably qualified to represent the child or young person (sect. 323 (2)).

346. In addition to a barrister or solicitor already representing a child or young person, the court may appoint a lay advocate to support the child or young person in any proceedings in the Youth Court relating to youth justice matters. The court is required to ensure that the person it appoints has sufficient standing in the culture of the child to be the lay advocate. If they are not already represented, the lay advocate will represent whanau, hapu and iwi, or their equivalents in other cultures, and ensure awareness of tribal or cultural matters.

347. Section 229 states that the parents or guardians or other persons are to be informed when a child or young person is either taken to an enforcement agency office for questioning or is arrested.

348. Under section 237, a child or young person who is arrested must be brought before the Youth Court or Family Court as soon as possible. The New Zealand Bill of Rights Act 1990 also contains several relevant provisions (in particular, sections 23-25, covering the rights of everyone arrested to be charged promptly or released; and of those charged to receive a fair and public hearing by an independent and impartial court, without undue delay, as well as to be informed promptly of the nature of the charge, and to consult and instruct a lawyer).

349. In addition to a right of appeal, every young person who has been found by a Youth Court to have committed an offence may, under section 351 of the Children, Young Persons and Their Families Act, appeal to the High Court against a finding of the Youth Court, an order made by it on the basis of that finding, or both.

350. Section 9 of the Children, Young Persons and Their Families Act provides that an interpreter must be provided for a child if his or her first language is not English, or if the child is by reason of physical disability unable to speak English. The Bill of Rights Act specifically states the right of everyone charged with an offence to have the free assistance of an interpreter if the person cannot speak or understand the language used in court. The Maori Language Act 1987 provides that participants in court proceedings have the right to speak Maori, whether or not they are able to speak English. Competent interpretation must be available in such instances. Rule 62 of the High Court Rules provides a Maori person upon whom a document is served with a right to have it translated into the Maori language.

351. As to the protection of the child's privacy during proceedings, sections 138-140 of the Criminal Justice Act 1985 describe the powers of the court to prohibit publication of information about offences which may lead to identification of those involved. Sections 38 and 271 of the Children, Young Persons and Their Families Act prohibit publication of the reports of proceedings of Family Group Conferences, and section 438 places restrictions on the publications of reports of proceedings under the Act. The police are in the process of negotiating a Code of Practice in compliance with the Privacy Act 1993 which will enhance full protection of the child's privacy. Currently outdated Police General Instructions are also being rewritten to ensure police practice complies with the requirements of the Privacy Act. Additional information on the protection of privacy has been provided in the report under section IV.G above commencing at paragraph 91.

Measures for dealing with children without resorting to judicial proceedings

352. There are two distinct situations where children and young people come into contact with the court system. These are:

(a) Care and protection proceedings for children and young persons aged 10-17 (except where charged with murder or manslaughter); and

(b) Youth justice provisions which apply in relation to criminal offending by young persons (aged 14 and over and to children of 10 and over in relation to charges of murder or manslaughter).

353. Various provisions of the law address the objective of dealing with children without resort to judicial proceedings. As a general observation, police policy requires that a decision to arrest should be exercised with discretion when dealing with young persons, particularly where a minor offence is involved.

354. Although the Children, Young Persons and Their Families Act specifically places emphasis on diverting children and young people up to 17 years of age from the court process, where the young person is 17 or over he or she is dealt with as an adult. Section 209 of the Act provides that where an enforcement officer is considering instituting legal proceedings against a child or young person, the officer must consider whether it would be sufficient to give a warning instead. The major mechanism for dealing with youth offenders outside judicial proceedings is the police diversion process, applied by Youth Aid sections in police stations throughout the country.

Police estimate that 80 per cent of youth offending brought to notice by front line officers is dealt with by diversion (including the issue of a verbal warning). The underlying objective, in keeping with sections 4 and 208 of the Children, Young Persons and Their Families Act (see above) is to divert a young offender away from the formal justice system. In cases involving a minor offence committed by a first-time offender, police also issue a written warning to the child or young person and notify the parent or guardian of the matter in writing. Where appropriate, a letter may also be sent to the victim of the offence. This is primarily a letter of apology and it may or may not engender a sense of remorse in the offender. For more serious or repeat offending, police have a wide range of options by which to effect diversion. These are discussed in meetings with the child or young person, the parents or guardians, and in some cases with the victim. Police may draw on extensive networks within the community to direct the child or young person towards counselling, community service, training, sport or recreational programmes.

355. In cases where police have exhausted the options for diversion, recommendations on a case are sent to a Youth Justice Coordinator of the Department of Social Welfare, who has responsibility for convening a Family Group Conference (also established under the Children, Young Persons and Their Families Act). The Conference, which brings together all those significantly involved (including the wider family members, victims, and enforcement agency representatives), must consider whether the young person should be prosecuted for the offence or whether he or she can be dealt with in some other way. The Conference must reach a consensus decision on this matter. If no agreement is able to be reached, the matter proceeds to court. Family Group Conferences convened for offending matters may also consider any perceived care or protection concerns if necessary. The Act provides that subject to certain provisos, the decisions, recommendations and plans made by Family Group Conferences are to be given effect by relevant enforcement agencies. The Police Adult Pre-trial Diversion scheme is available to those offenders of or over 17 years of age. This scheme allows an adult offender who acknowledges guilt and displays remorse to be steered away from the negative effects of further involvement in the formal criminal justice system.

356. Public powers to arrest children or young persons without warrant are limited by section 214 of the Children, Young Persons and Their Families Act. In general such persons may not be arrested unless there are reasonable grounds to believe that the arrest is necessary to ensure the person's appearance in court or to prevent interference with witnesses. Exceptions are where the offence is purely indictable and the arrest of the offender is required in the public interest; or in relation to breath or blood alcohol provisions of the Transport Act; or under certain provisions of the Immigration Act. Arrests of young people by the police have increased from 2,428 in 1993 to 2,750 in 1994 out of a total of about 40,000 offences committed by young people. This increase may be due to a number of factors, including the merging of the Police and Traffic Safety Service, the increase in police numbers, improved detection rates, and an increase in young people committing serious crimes for which arrest is the appropriate response.

357. While the Bill of Rights Act 1990 affords all children covered by the Convention protection in the detection and investigatory stages of proceedings, the principle that "recourse to judicial proceedings should be avoided wherever possible" is not an element of the Act.

Availability of a variety of alternatives to institutional care

358. Part 1 of the Criminal Justice Act 1985 sets out a range of principles to guide the judiciary in imposing sentences. Section 283 of the Children, Young Persons and Their Families Act sets out a range of 15 different orders that can be made by the youth court, including community work, supervision, payment of reparation to a victim, etc. Other sentences are available for persons of any age, including those under 18, under the Criminal Justice Act. These include periodic detention, corrective training, and community service. A person under 16 years of age convicted of a serious offence such as murder or manslaughter may be sentenced to imprisonment. The sentence may be served in prison or in a social welfare residence, but in the relatively rare circumstances when an offender under the age of 16 is sentenced to imprisonment, it is agreed policy that the sentence should be served in a social welfare residence rather than in a prison.

2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c), (d))

359. Reference may be made to the preceding sections, commencing at paragraph 340, for information on the New Zealand youth justice system. The Children, Young Persons and Their Families Act, and the Criminal Justice Act 1985, in particular, provide specific direction on matters such as the arrest, detention or imprisonment of a child. The eight youth justice principles set out in section 208 of the former Act support the objective of article 37 (b) of the Convention, ensuring that criminal proceedings against a child or young person are instituted only as a measure of last resort. As of May 1994, there were 309 prison inmates under 20 years of age (303 males and 6 females). This constituted just under 7 per cent of the total prison population.

360. New Zealand has entered a reservation to article 37 (c) of the Convention, concerning the mixing of juvenile and adult prisoners. The Government has reserved its right not to apply this article in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further where the interests of other juveniles in an establishment require the removal of a particular juvenile offender, or where mixing is considered to be of benefit to the persons concerned. (A similar reservation was entered to article 10 (3) of the International Covenant on Civil and Political Rights when New Zealand ratified it in 1978).

361. The Department of Justice does not operate separate youth prisons for the youngest prisoners (i.e. those aged 16 and 17 years). Such separation would hinder reintegration, the policy by which prisons are currently operated in New Zealand. This policy is focused on the successful reintegration of offenders into the community. It aims to promote the best interests of the offender, as well as providing the best protection for society. The prison term is intended to play a part in the reintegration process. Accordingly, the prison system is a network of small, community-based regional prisons, as close as possible to the offender's family and support networks. Separate youth prisons would inhibit reintegration because offenders would have to be moved away from their communities. However, the Penal Institutions Regulations, regulation 167 requires that prison inmates under the age of 20

shall be kept apart from inmates of or over that age, so far as is practicable. In two prisons young people are kept separate from other inmates. The numbers of young offenders in those prisons ensures that they have full opportunities for social interaction and access to a wide variety of programmes and activities. The Secretary of Justice may direct that youth inmates may mix with adult inmates if that is in their best interests. This has been done in minimum security prisons.

362. With regard to the detention of children and young people, Police General Instructions require District Commanders to ensure suitable procedures are established whereby the police may hand over to the Department of Social Welfare, young offenders who have been arrested and who are to be detained in custody, other than police custody. Where the young persons have to be locked up while in police custody, they must be kept separate from adults.

363. The Department of Justice is currently undertaking a research project on the topic of age mixing of prisoners.

3. The sentencing of juveniles, including prohibition of capital punishment and life imprisonment (art. 37 (a))

364. Under the Abolition of the Death Penalty Act 1989, capital punishment was abolished in New Zealand. Section 89 (1) of the Criminal Justice Act 1985 provides that an offender subject to an indeterminate sentence (life imprisonment or a sentence of preventive detention) is eligible to be released after 10 years of that sentence. Imprisonment without possibility of release cannot therefore be imposed.

4. Physical and psychological recovery and social reintegration (art. 39)

365. As noted in paragraph 361 above, prison planning since the mid-1980s has been based on a model which includes a network of small, community-based, regional prisons, as a means of promoting close community contacts, and in particular, contacts for inmates with their family or whanau. The aim is to hold both youth and adult inmates in regional prisons as close as possible to their families and support networks, with the overall objective of preparing them for reintegration into society. Growth in prison numbers has meant that existing prisons have been expanded to meet demand. This practice has been undertaken with the aim that these prisons should act as regional facilities replacing older more centralized facilities when demand allows that to occur.

366. Preparation for reintegration involves the management of programmes and services for each individual offender from the time of reception into prison until the end of the parole period. Links with community groups are fostered during the sentence and may lead to programmes continuing beyond it. For young offenders who are on parole or subject to sentences of supervision and community programmes, appropriate programmes are provided to support recovery and reintegration. The Department of Justice's Psychological Services Division provides a service to young offenders serving either a prison or community-based sentence to assist them with social reintegration. The case management process which is being implemented in all prisons is aimed at reintegration of offenders.

Juvenile Justice Policy Review

367. A major review of the policy of the Department of Justice on the treatment of prison inmates under the age of 20, and of corrective trainees, was undertaken recently. This was based on recommendations arising from the Ministerial Committee of Inquiry into the Prisons System in 1989 and the department's submission to that inquiry. A central focus of the review was how to reduce the level of recidivism. Measures taken to date, including the sentence of corrective training, have not been successful in this respect. The review concluded that the most promising approach was one that focused on reintegration in the community. Draft proposals included the pilot testing of residential units providing intensive programmes for high-risk offenders, especially those under 20 years of age, and a revised corrective training regime to place greater emphasis on reintegrative programmes. The review looked carefully at the question whether it is better to separate young offenders from the rest of the inmate population or to have age mixing. Age mixing is now generally favoured in New Zealand prisons, as it is considered that it is very likely to contribute to a healthier social environment for inmates. Research is currently being undertaken into the issue of age mixing and firm policy proposals will be made by the Ministry of Justice when results are known.

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39)

1. Economic exploitation, including child labour (art. 32)

368. New Zealand made a reservation in relation to article 32 of the Convention at the time of ratification. The Government considers that the rights of the child provided for in article 32 (1) are adequately protected by its existing law. It therefore reserved the right not to legislate further or to take additional measures as may be envisaged in article 32 (2).

369. While New Zealand law does not specifically provide a minimum age for admission to employment, further legislation is not considered necessary in view of the range of protections and entitlements available. The employment of children under the age of 16 is constrained under section 30 of the Education Act 1989 which prohibits: the employment of a child aged less than 16 within school hours or if the employment then prevents or interferes with the child's attendance at school; the employment of a child aged less than 16, where the child is enrolled at a correspondence school, where the employment interferes with the child's ability to do the work of the course; and the employment of a child aged less than 16, where the child has been granted a certificate of exemption by the Secretary for Education, where the employment interferes with the child's ability to be taught as well and regularly as in a registered school. Parents and/or employers can be prosecuted and fined up to $1,000 for breaching these provisions.

370. The Labour Inspectorate of the Department of Labour provides employees (as well as employers and the general public) with free information and advice on employment-related matters. There are currently 31 inspectors and a centralized information centre provides a free phone inquiry service for the whole country. All employees in New Zealand, irrespective of age, have a

range of minimum conditions of employment protected by law. These include: paid public holidays, annual holidays and special leave (under the Holidays Act 1981); protection from unlawful deductions from wages (Wages Protection Act 1983); protection from unequal payment or work conditions for the same or substantially similar work on the basis of sex (Equal Pay Act 1972); provision to be heard on various personal grievances, such as unjustifiable dismissal, discrimination, sexual harassment or being subjected to duress in relation to membership or non-membership of an employees' organization (Employment Contract Act 1991); and access to the Employment Court to have part or all of an employment contract set aside if an employee believes that their employment contract contains harsh or oppressive conditions or was obtained by harsh and oppressive behaviour, undue influence or duress. In terms of the Industry Training Act 1992, apprentices are included in the definition of "employee" for the purposes of the Employment Contracts Act. In addition, the Minors' Contracts Act 1969 provides that employment contracts of employees under 20 are binding unless (a) at the time the contract was entered into, the consideration was so harsh as to be unconscionable, or (b) any part of the contract was harsh or oppressive.

371. Pursuant to the Minimum Wage Act 1983, the Minimum Wage Order 1995 sets out minimum rates of pay for employees aged 16 to 19 years. This rate is $3.75 compared to the adult minimum of $6.25 per hour. These include separate minimum rates for every hour worked in excess of eight hours per day, or in excess of 40 hours per week. The Minimum Wage Act does not apply to certain groups of employees regardless of their age (certain categories of trainees set out in the Minimum Wage (Training in the Nature of Apprenticeship) Regulations 1992, and those employees who hold an under-rate worker's permit). Any person who breaches the Minimum Wage Act is liable to a penalty recoverable by a labour inspector.

372. Under the Health and Safety in Employment Act 1992, employers must do everything practicable to ensure the safety of employees at work. In particular, they must provide and maintain a safe working environment, and facilities for employees' safety and health while at work, ensure that the plant used by any employee at work is safe to use, and that no employee is exposed to a hazard either in or near their place of work; and they must develop procedures for dealing with emergencies that may arise while employees are at work. Employers are also required to identity hazards in the workplace, and where practicable eliminate them. If it is impracticable to eliminate the hazard, the employer must take all reasonable steps to isolate the hazard; and where both elimination and isolation are impracticable, significant hazards must be minimized and employees protected. Health and Safety Inspectors of the Department of Labour are able to issue notices to employers and other people requiring them to take action to improve health and safety conditions in places of work and also to prohibit work continuing until significant hazards are removed. Breaches of this Act may be penalized by a range of fines up to $100,000 and/or up to one year's imprisonment.

373. While a number of provisions prohibiting the employment of young persons in particular industries went into abeyance when the Health and Safety in Employment Act was adopted in 1992, regulations made pursuant to the Act are currently being drafted following consultation with interested parties and will reinstate these prohibitions, as well as extending them into the

construction and forestry industries. The regulations will reinstate previous restrictions on the use of machinery by persons under 15 years. There will also be a provision prescribing restrictions on the employment of people under 16 between the hours of 10 p.m. and 6 a.m.

374. Information about the Human Rights Act 1993 has been provided at earlier stages of the report. The Act extended the grounds on which discrimination is prohibited to include the grounds of age. In terms of discrimination in employment matters "age" is defined as commencing with the age of 16 and ending with the date on which the employee qualifies for national superannuation. (This qualification age is progressively increasing from an entitlement at 60 to an entitlement at 65). However, after 1 February 1999 there will be no upper limit and protection from age discrimination in the area of employment will be afforded to persons of any age, commencing with the age of 16 years. The Act makes two exceptions where age discrimination may be lawful: (a) in refusing work to a person, or in retiring an employee where being in a particular age group is a genuine occupational qualification for the position; and (b) in paying a person under 20 years of age at a lower rate than another person in similar job circumstances.

375. Sexual harassment and racial harassment are prohibited in all the areas covered by the Human Rights Act including employment. Employers are liable for prosecution if employees commit sexual or racial harassment unless they can show that they have taken all reasonably practical steps to prevent the offence. All young people under 16 are protected from discrimination on the grounds of sex, marital status, religious beliefs, ethical beliefs, colour, race, ethnic or national origins, disability, political opinion, employment status, family status and sexual orientation, described in the Human Rights Act.

2. Drug abuse (art. 33)

376. A wide range of narcotic and other drugs are strictly controlled by the Misuse of Drugs Act 1975 and the Misuse of Drugs Regulations 1977. It is a serious offence for anyone to obtain, manufacture, possess, consume, supply or offer to supply controlled drugs unless authorized under the Act. Heavy penalties are also available for illegal dealing in controlled drugs. Distinctions are made within the Act as to the class of drug and the age of person to whom it is supplied. Supply or sale to a person under the age of 18 is a more serious offence than supply or sale to an older person.

377. New Zealand has signed the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Although New Zealand has not ratified the Convention there is legislation in place which ensures the control of some of the substances listed in the tables of the Convention. This legislation (the Alcoholism and Drug Addiction Act 1966) covers matters such as manufacture, storage, handling, importation, transport, labelling, advertising and sale of these substances. The legislation applies to the whole population, including children (although there are no special provisions for them). New Zealand submits data and statistics to the United Nations annually regarding these substances. It is hoped that ratification of the Convention will be possible in the near future, following the passage of the necessary legislation.

378. Regional Health Authorities (RHAs) must make available specific services for people diagnosed as abusing or dependent on psychotropic substances, including alcohol, or using excessive amounts of substances and at risk of abuse or dependence. These services should include health promotion and education to counter drug and alcohol abuse; problem prevention and harm reduction strategies targeting particular at-risk groups; early intervention and screening programmes; and assessment, treatment and rehabilitation.

379. Drug and alcohol assessment and diagnosis, and a 24-hour crisis response facility, are also included in the therapeutic services purchased as part of the RHAs' mental health services for the total population.

380. The police have a major role in the prevention, detection, investigation and prosecution of drug offending. This includes the provision of a police presence at schools and other places where young people's involvement in drug dealing and use may be prevented or detected.

381. Drug education is an important part of the health syllabus for primary and secondary schools. "Guidelines on Drug Education for Schools and Boards of Trustees" were developed by the Ministry of Education in 1991. There are a wide range of provider programmes and resources in the drug education field. The guidelines were prepared in response to requests from principals and boards of trustees for information and guidance on appropriate programmes for students' needs. The guidelines assist schools not only in establishing a drug education programme but also in reviewing and evaluating how effective these programmes are in changing student behaviour and attitudes.

3. Sexual exploitation and sexual abuse (art. 34)

382. Reference should also be made to the report under section V.I (art. 19) concerning protection of children from abuse and neglect. Sexual abuse is one of the forms of ill-treatment listed in section 14 of the Children, Young Persons and Their Families Act 1989, in defining a child or young person in need of care or protection.

383. It is an offence under the Crimes Act 1961 to have a sexual relationship with anyone under 16 years of age. Sections 127 to 144 of the Act deal with sexual offences, and sections 131 to 134 and section 140 are directed specifically at preventing the sexual exploitation of children and young persons. Section 210 (1) (essentially a kidnapping/abduction provision) makes it an offence to take or entice away or detain a girl under 16 or to receive a girl knowing her to have been taken, enticed away or detained with the intent of *inter alia* having sexual intercourse with her or with the intent to deprive the person who has lawful care or custody of the girl of that custody or care.

384. The Children and Young Persons Service of the Department of Social Welfare has established as an administrative guideline a 24-hour maximum response time to reports of abuse. As the sexual exploitation of children is inherently both a care and protection and a criminal justice matter, the police and the Department of Social Welfare work together on sexual abuse allegations. In urban areas, police operate formalized investigative units as a way of structuring police work where staff changes occur frequently because

of rostering arrangements. In this way, large urban centres generally support specialist child abuse investigations units, or other units dedicated to dealing with family violence. Child abuse units, also known as "sexual abuse teams" are deployed to work closely with staff from the Children and Young Persons Service.

385. Immediately a report of child sexual abuse is received, a sexual abuse team comprising a designated police officer and a designated social worker or sexual abuse coordinator is set up to take responsibility for the investigation. If, in order to protect the child from further abuse, the alleged offender and the child must be separated, the alleged offender is removed from the home. If a medical examination is indicated, certain restrictions apply and the child or young person is entitled to have an adult present during it.

386. Certain counselling, therapy and treatment services for children who are victims of abuse and their families are provided through child and family clinics which are attached to some public hospitals. There is a range of community groups and individuals who may also provide such services, but there is some shortage of appropriate services specifically designed to meet the needs of abused and neglected children and their families. Further development of these services is being addressed by an interdepartmental working group convened by the Ministry of Health, which is looking at the mental health needs of children, young people and their families. The working group includes representatives from the Ministry of Education, Te Puni Kokiri (Ministry of Maori Development) and the Department of Social Welfare, as well as other departments in a consultative capacity.

387. The Ministry of Education has issued several publications in relation to sexual abuse, for the information of parents and others interested in preventing child abuse in schools and early childhood education centres.

388. An amendment to the Crimes Act 1961 has recently been enacted to create two new offences to apply to New Zealand citizens or residents who engage in sexual activity with children overseas, or who promote or assist other people to travel overseas where one of the purposes of the trip is to engage in sexual activity with children.

389. The Films, Videos and Publications Classification Act 1993 contains specific provisions to protect children from sexual exploitation in these media. Any publication that promotes or supports the exploitation of children or young persons for sexual purposes is considered objectionable, taking into account factors such as descriptions of sexual conduct with or by children or young persons and exploitation of the nudity of children or young persons.

4. Other forms of exploitation (art. 36)

390. Relevant provisions of the Children, Young Persons and Their Families Act 1989 have been described in earlier sections of the report, especially under section V.

5. Sale, trafficking and abduction (art. 35)

391. The police investigate any report of the sale, trafficking or abduction of children. Penalties for such offences are set out under New Zealand's criminal laws. Reference may also be made to earlier sections of the report, especially under section V.

392. New Zealand is party to the Slavery Convention, 1926 and the International Convention for Suppression of the Traffic in Women and Children 1921.

D. Children belonging to a minority or an indigenous group (art. 30)

393. In New Zealand, the economic and social situation of Maori people continues to give cause for concern. Background information on this may be found in the core document, or in New Zealand's periodic reports on the implementation of the other major human rights instruments to which it a party. Reference has also been made at various points throughout the report to special measures being undertaken in the fields of, for example, education, health and social welfare, to protect and promote the interests of Maori children and young people. An important factor in the legislative reforms which led in 1989 to the adoption of the Children, Young Persons and Their Families Act was the realization that existing structures for the care and protection of children, and for youth justice, had been meeting the needs of Maori children and young people.

394. The Government has committed resources to promoting a bicultural approach in the work of its agencies. Te Puni Kokiri (the Ministry of Maori Development) is a specialist agency for formulating Maori policy and monitoring the work of other government departments in catering for Maori needs. Te Puni Kokiri has as its main purpose to assist in developing an environment of opportunity and choice for tangata whenua, consistent with the Treaty of Waitangi. It focuses on improving Maori performance in education, employment, business development and health.

395. The Government is committed to assisting the retention of te reo Maori (Maori language) and improving the education participation rates and achievement levels of Maori people. The "Ten Point Plan for Maori Education" represents all the major actions the Ministry of Education is undertaking in this area.

396. Kohanga reo (Maori language immersion early childhood programme, or "language nest") continues to be the single most popular form of early childhood education accounting for 49 per cent of all Maori enrolments in 1994. Beginning with 6 in 1989 and growing to 38 by the beginning of the 1995 school year, Kura kaupapa Maori (schools in which Maori language, culture and values predominate) now cater for more than 2,700 students. Of the total number of Maori in school, 1.1 per cent are enrolled in kura kaupapa Maori and a further 12.5 per cent are enrolled in some other form of bilingual education. The success of kaupapa Maori initiatives in reviving Maori enthusiasm for learning is immediately evident, both in the demand for available places, and the energy and commitment of participating Maori families.

397. The first kura kaupapa a rohe (Maori immersion area school), catering for primary and secondary schools, was established in 1992; and a whare kura (Maori immersion secondary school) is being piloted at Hoani Waititi Marae, monitored by the Ministry of Education. In addition, two primary schools have undertaken to teach third form students and fourth form students in Maori in 1995. The secondary sections of these two schools are, for administrative purposes, attached as units of neighbouring secondary schools. Approximately 20,000 Maori children are participating in Maori language immersion programmes at some level.

398. The New Zealand Government wishes to ensure kura kaupapa Maori have enough qualified teachers available for appointment as teaching vacancies arise. Since the 1993/94 fiscal year, approximately 500 teachers have received training to enable them to be better equipped to teach in the Maori-medium classroom. Ongoing funding of more than $2 million is available to continue this in-service training.

399. In June 1995, the Government announced it would provide $30 million worth of new initiatives to build on successful Maori education programmes. This includes the approval of another five kura for establishment and operation in 1996 and an additional five each year in 1997 and 1998.

400. The outcome for Maori from the mainstream education programmes will be critical, given that this is where the majority (87 per cent) are concentrated. Over the past decade Maori education has been characterized by enrolment growth and improvements in participation. During this time the number of Maori children enrolled in early childhood education has doubled, young Maori have become twice as likely to remain in school to senior form levels and the number of Maori tertiary students has increased threefold.

401. While these improvements have indeed been substantial, the historical disparities have been such that there is some way to go before parity will be achieved. Further, because improvements for non-Maori students have also occurred, a sizeable gap still remains between the two groups.

402. The Government's continued support and commitment to improving education outcomes for Maori and Pacific islands students is acknowledged in "Education for the 21st Century", a document which sets education targets. In future policy development the New Zealand Government wishes to address disparities in the critical areas of secondary school retention, school truancy, achievement and attainment, participation in core subject areas and progression on to further education and training.

403. An important example of biculturalism in government departments is seen in the commitment of the Department of Social Welfare to the principles of "Puao-te-Ata-tu" (Daybreak), a 1986 Ministerial Committee Report on a Maori Perspective for the Department, which argued, inter alia, for more community involvement in the Department's functioning. Commitment to the principles of "Puao-te-Ata-tu" is restated in a recently released departmental strategic document called "Te Punga" which includes in it strategies for developing relationships with iwi. It is hoped this will result in closer links with iwi so that sensitive and fully accessible services can be provided to all people in New Zealand.

404. Within the Ministry of Women's Affairs, Te Ohu Whakatupu is the Maori women's secretariat. Te Ohu Whakatupu has developed Te Iho Kohine, a pilot project (funded and managed jointly with Te Puni Kokiri) aimed at providing training for Maori girls aged between 7 and 15 years, to overcome barriers to achievement including racism and sexism.

405. The commitment to biculturalism in the government sector does not preclude a government commitment to also meet the needs of other ethnic groups living within New Zealand. The largest of the non-European and non-Maori group are those people of Pacific island descent.

406. The Ministry of Pacific Island Affairs has a wide-ranging brief to monitor the impact of government policies on Pacific island communities in New Zealand. Its current priorities include policy development in education (especially pre-school and tertiary), skills training and employment, and health and business development.

407. In April 1992, the Department of Internal Affairs established an Ethnic Affairs Service (EAS). The EAS focuses on ethnic groups of non-Maori, non-Pacific Island and non-Anglo-Saxon background.

408. The role of the EAS is to liaise with ethnic communities, including refugee groups and new and established ethnic communities, and to discuss their concerns with relevant government agencies. The EAS also provides ethnic communities with information on government services, including services for children.

GLOSSARY OF TERMS

hapu	sub-tribe
iwi	tribe
kaumatua	male elder
kura kaupapa Maori	school in which Maori language, culture and values predominate
pakeha	European New Zealander
marae	meeting place
tangata whenua	people of the land/indigenous people
taonga	treasure
wananga	tertiary level education institution
whanau	family
whare kura	Maori lanaguge immersion secondary school

List of Annexes*

Reports and supporting papers

Annual report of the Office for the Commissioner of Children for the year ended 30 June 1994

Ministry of Education Annual Report for 1993/1994 and Strategic Directions for Maori Education for 1994/95, including information on the Ten Point Plan for Maori Education

Poster and folder relating to the Convention

Student's Rights at School - Information kit (Office of the Commissioner for Children)

Legislation and regulations (with amendments)

Human Rights Act 1993
Children, Young Persons and Their Families Act 1989
Crimes Act 1961
New Zealand Bill of Rights Act 1990
Status of Children Act 1969
Guardianship Act 1968
Education Act 1989
Privacy Act 1993
Education (Early Childhood Centres) Regulations 1990
Child Support Act 1991
Health and Disability Services Act 1993
Minimum Wage Order 1995

Text of New Zealand's reservations to the Convention.

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* Available for consultation in the files of the secretariat.